CUSTOMS BULLETIN AND DECISIONS

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and

U.S. Court of International Trade

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This issue contains:

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

NOTICE

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Cut Just Above This Line †

U.S. Customs Service

Treasury Decisions

19 CFR Part 175

(T.D. 94–88)

DECISION FOLLOWING A PETITION BY DOMESTIC INTERESTED PARTIES CONCERNING THE LOCATION AND METHOD OF COUNTRY OF ORIGIN MARKING FOR IMPORTED CAST IRON SOIL PIPES

AGENCY: U.S. Customs Service, Department of Treasury.

ACTION: Final interpretative rule.

SUMMARY: This document gives notice that Customs has made a determination pursuant to a petition filed by domestic interested parties that cast iron soil pipes like the samples submitted to Customs and that are subject to the requirements of section 304(c), Tariff Act of 1930, as amended, are not legibly marked in a conspicuous location to indicate their country of origin by die stamping the letters covered by tar at the edge or lip of the pipe.

EFFECTIVE DATE: The marking requirements set forth in this decision for cast iron soil pipe shall become effective as to merchandise entered or withdrawn from warehouse or consumption December 23, 1994. After that date, cast iron soil pipe like the sample submitted to Customs pursuant to this petition entered for consumption or withdrawn from warehouse for consumption and not marked to indicate their country of origin consistent with this decision and other marking requirements of the Tariff Act and Customs Regulations shall be assessed marking duties.

FOR FURTHER INFORMATION CONTACT: Robert Dinerstein, Office of Regulations and Rulings, U.S. Customs Service, (202) 482–7010

SUPPLEMENTARY INFORMATION:

BACKGROUND

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304) provides that, unless excepted, every article of foreign origin imported into

the U.S. shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or container) will permit, in such a manner as to indicate to the ultimate purchaser in the U.S. the English name of the country of origin of the article. Congressional intent in enacting 19 U.S.C. 1304 was that the ultimate purchaser should be able to know by an inspection of the marking on the imported goods the country of which the goods is the product.

Part 134, Customs Regulations (19 CFR Part 134), implements the country of origin marking requirements and exceptions of 19 U.S.C. 1304. As provided in section 134.41, Customs Regulations (19 CFR 134.41), the country of origin marking is considered to be conspicuous if the ultimate purchaser in the U.S. is able to find the marking easily and read it without strain.

Section 207 of the Trade and Tariff Act of 1984, (Pub. L. 98–573), amended 19 U.S.C. 1304 to require, without exception, that all pipe, tube, and pipe fittings of iron or steel be marked to indicate the proper country of origin by means of die stamping, cast-in-mold lettering, etching, or engraving. 19 U.S.C. 1304(c). In 1986, Congress enacted Pub. L. 99–514 which amended 19 U.S.C. 1304(c) to authorize alternative methods of marking if, because of the nature of an article, it is technically or commercially infeasible to mark by one of the four prescribed methods. The amendment, codified at 19 U.S.C. 1304(c)(2), provided that in such case, "the article may be marked by an equally permanent method of marking such as paint stenciling or in the case of small diameter pipe, tube, and fittings, by tagging the containers or bundles."

On December 8, 1993, as part of the North American Free Trade Agreement ("NAFTA") Implementation Act, Congress again amended the country of origin marking provisions on pipe. Pub. L. No. 103–182. Section 207(a) of the Act revised the requirements for marking the country of origin for pipes of iron, steel, or stainless steel by adding a fifth acceptable statutory method of marking, continuous paint stenciling. In addition, 19 U.S.C. 1304(c)(2) was amended by eliminating the reference in the statute which indicated that paint stenciling was an example of an equally permanent method of marking that could be used if it was technically or commercially infeasible to mark by one of the other statutory methods.

Counsel for the domestic petitioners, U.S. manufacturers of cast iron soil pipe, first raised the question of whether the country of origin marking on imported cast iron soil pipe was legible and/or in a conspicuous location in 1992. Petitioners submitted a sample and photographs of imported pipe manufactured in Venezuela. After reviewing the sample and considering the information submitted, Customs concluded that the country of origin marking on the sample satisfied 19 U.S.C. 1304 because the pipe was marked by one of the mandated statutory methods for marking pipe, die stamping. We stated, in a letter dated March 31, 1993, that the marking on the end of the pipe was in a conspicuous location and was legible. We further advised that if the domestic producers

did not agree with Customs position, they could file a domestic interested party petition in accordance with 19 U.S.C. 1516 and 19 CFR Part 175.

THE PETITION

The instant petition was initiated by letter dated October 6, 1993, and filed with Customs under section 516, Tariff Act of 1930, as amended (19 U.S.C. 1516) and Part 175, Customs Regulations (19 CFR Part 175). The petitioners are The American Brass and Iron Foundry and Charlotte Pipe and Foundry Company. The product at issue is cast iron soil pipe. As the name implies, it is pipe made of cast iron, and it is used primarily to convey waste water from sinks, showers, toilets, and other fixtures within buildings to municipal sewers. Both petitioners are U.S. companies which manufacture cast iron soil pipe like the imported product at issue.

Submitted with the petition were other supporting materials including numerous photographs, diagrams, and other technical specifications regarding the pipe. In addition, accompanying the petition, were numerous letters from plumbing supply businesses, plumbing contractors, and general contractors.

In explaining the merchandise, the petition points out that there are generally two different types of cast iron soil pipe: "hub and spigot" pipe and "no hub" (or "hubless pipe"). The hub spigot pipe has a bell-shaped hub in which a straight spigot pipe is inserted. A rubber gasket is inserted between the two pipes to secure the juncture. No hub pipe has two straight ends. A stainless steel coupling and a rubber gasket are placed over the juncture where the two straight pipes ends meet.

The cast iron pipe comes in a variety of standard sizes, with the pipe's inside diameter ranging from 1.5 to 15 inches. The pipe is generally produced in five- and 10-foot lengths. Plumbing subcontractors may cut the pipe to shorter lengths at a job site to make it fit to the needs of a particular building project. Besides the field cutting, the petitioners represent that there is no further processing done to the pipe. The pipe is sold to wholesalers of plumbing supplies who in turn, resell the pipe to plumbing subcontractors for installation in buildings under the auspices of general contractors. Sometimes the general contractor purchases pipe directly from the distributor and performs the installation with its own workforce.

The petitioners contend that Customs should rule that the country of origin marking on the imported cast iron soil pipe is unacceptable because it is not conspicuous or legible. The pipe is marked, as shown by the samples, by die stamping on the end or lip of the pipe. Counsel for the petitioners maintains that this marking is difficult to find because of its location at the end of the pipe and hard to read due to the small surface area of the pipe end and the minimal thickness of the raised lettering. With respect to the size of the marking, the petition states that the marking on the imported pipe ranges from .183 inches on 1.5 inch diameter pipe to a maximum of .73 inches on 15 inch diameter pipe and even

on the largest pipes, the letters are less than one-inch high. It is also pointed out that the lettering is in a non-contrasting color and a tar coating will frequently cover the marking.

All the letters accompanying the petition from plumbing supply companies, plumbing subcontractors, and general contractors declare that the way the imported cast iron soil pipe is presently being marked is inadequate. The contractors and suppliers indicate that they usually prefer to buy U.S.-made pipe because of its high quality. Furthermore, if there is a flaw in the product, the manufacturer can be located and it will either stand behind the product or be subject to the jurisdiction of the U.S. courts. In addition, a plumbing supply company points out that government construction jobs usually require American made goods. Moreover, frequently, even for non-government buildings, the engineering specifications call for U.S.-made pipe. Several suppliers also mention that if a building inspector discovers that unapproved foreign-made pipe has been used at a job site, the pipe must be replaced at substantial cost.

Additionally, it is represented that sellers of foreign pipe can command a higher price if their customers are not aware of the pipe's origin. Since foreign-made pipe cost less, a considerable profit can be made if the origin is not adequately disclosed.

The plumbing contractors and suppliers express the opinion that marking on the end of the imported pipe is not legible because of the small surface area which requires that the letters of the marking be small. The letters are also covered with a thick tar coating which obliterates any space between the letters and pipe surface.

An additional point was made by a plumbing contractor who explained that the pipe is frequently stacked up with the hub face, with the country of origin marking on it, pressed against a wall. Because the pipe generally weighs between 45 and 85 pounds it is difficult to check every piece of pipe for country of origin marking. Often foreign pipe and domestic pipe is mixed together making it even harder to check the country of origin of all pieces of pipe. In addition, since the pipe must be moved away quickly so that other contractors can deliver their materials, there is often little time to check the country of origin marking at the end of the pipes.

Another contractor explained that after the pipes are installed, the marking on the hub face becomes impossible to read because the ends of a hub and spigot pipe are covered by a compression gasket and the ends of the no-hub pipe are obscured by no-hub couplings. Furthermore, because the pipe may be cut in the field, the country of origin marking at the end of the pipe may be eliminated on the installed pipe, and thus it becomes impossible to check the pipe for its country of origin. This is of special concern to the general contractors because they must verify that the subcontractors they hired used the proper materials in accordance with a building's specifications.

To avoid these problems, the contractors and plumbing supply companies request that Customs mandate that the country of origin of the pipe be paint stenciled on the barrel of the pipe.

Because of the way cast iron soil pipes are made, the petitioners contend, under present technology, the only statutory method for marking pipe, listed in 19 U.S.C. 1304(c), which will produce a legible and conspicuous marking is paint stenciling. First, the petitioners state that cast iron pipe is very brittle and any attempt to die stamp a marking into the barrel of the pipe would cause the metal to shatter. Likewise, petitioners also maintain that it is also technically and commercially infeasible to mark by cast-in-mold letters on the pipe barrel due to the centrifugal casting process used in making the pipe. Under this process, iron is injected into a permanent metal mold. After the metal is cooled, a clamp-like device (known as a gripper or puller) is inserted into the hollow center of the pipe and the pressure of the gripper against the inside walls of pipe allows it to be extracted from the mold. If the marking were cast into the mold and transferred onto the pipe barrel, the pipe could not be extracted because the indentation from the lettering would destroy the smooth surface of the pipe and prevent it from being extracted.

Finally, petitioners claim that etching or engraving the pipe would not produce a legible or conspicuous marking consistent with the requirements of 19 U.S.C. 1304. The letters of etched or engraved markings would be thin and would not have the bulk necessary to make them visible on a cast iron pipe. Moreover, the tar coating applied to the finished cast iron pipe would totally obscure any etched or engraved country of origin marking rendering the marking very difficult to read. However, no evidence or samples were submitted to support these claims.

Accordingly, the petitioners urge Customs to require that the country of origin marking on cast iron soil pipe be done through paint stenciling following the standards developed by the American Society for Testing and Materials ("ASTM") or the Cast Iron Soil Pipe Institute.

Discussion of Comments and Issues

After receipt of the petition, in accordance with the procedures described in 19 U.S.C. 1516 and 19 CFR Part 175, a notice was published in the Federal Register on March 8, 1994 (59 FR 10764), stating that Customs had received a domestic interested party petition concerning the country of origin marking for imported cast iron soil pipe. The public was invited to comment as to whether the marking by die stamping on the end of imported cast iron soil pipe was sufficiently legible and conspicuous to satisfy the requirements of 19 U.S.C. 1304 or if paint stenciling had to be used to achieve a proper marking under 19 U.S.C. 1304(c). In response to the notice, only one comment was received and it was from the petitioners. In this comment, petitioners point out that as part of the NAFTA Implementation Act, P.L. 103–182, 107 Stat. 2057, 19 U.S.C. 1304(c) was amended by identifying continuous paint stenciling as one of five statutory methods by which iron, steel, or stainless steel pipe could be marked with the country of origin. According to the peti-

tioners, this amendment to the statute supports their position because it is now not necessary to establish that it is technically or commercially infeasible for the article to be marked by die stamping, cast-in-mold lettering, etching, or engraving before paint stenciling can be permitted. They also point out that the amended statute requires a particular kind of paint stenciling, "continuous" paint stenciling. The comment stated that continuous paint stenciling means that the marking information must be repeated over the length of pipe barrel. It is their position that continuous paint stenciling will ensure that the country of origin marking will be conspicuous and that it will not be eliminated when the pipe is cut to length.

CUSTOMS DECISION ON THE PETITION

After review of the petition, all the accompanying supporting statements and the comment, and upon consideration of the legal and policy factors, Customs has determined that the arguments presented in the petition have merit. We believe that the correct administration of the country of origin marking statute and regulations with cast iron soil pipe requires a reversal of the previous Customs position.

In 19 U.S.C. 1304(c), Congress mandated that pipes, tubes, and fittings made of iron or steel must be marked by one of five statutory methods. However, there is no indication that Congress intended that marking by one of the statutory methods mentioned in 19 U.S.C. 1304(c) would eliminate the requirements under 19 U.S.C. 1304(a) that the marking also be legible and in a conspicuous location as the nature of the article will permit. Consequently, although cast iron soil pipes are marked by one of the methods specified in 19 U.S.C. 1304(c), die stamping, in order to satisfy 19 U.S.C. 1304(a), the marking must also be legible and be in conspicuous location. 19 U.S.C. 1304 requires that Customs not permit the importation of cast iron soil pipes into the United States unless they are legibly marked in a conspicuous location with their country of origin.

As guidance, Customs has previously set forth some factors to consider in determining whether the country of origin marking on an imported article is legible and conspicuous within the meaning of 19 CFR 134.41 and 19 U.S.C. 1304. Section 134.41, Customs Regulations (19 CFR 134.41), requires that the ultimate purchaser in the U.S. must be able to find the marking easily and read it without strain. Customs has stated that among these factors are the size of the marking, the location of the marking, whether the marking stands out, and the legibility of the marking.

The size of the marking should be large enough so that the ultimate purchaser can easily see the marking without strain. In other words, a marking which is too small to be read easily is not legible within the meaning of 19 U.S.C. 1304.

Whether the marking stands out is dependent on where it appears in relationship to the other print on the article and whether it is in contrasting letters to the background. If the marking cannot be discerned

from the background on which it is set against, it will not be an acceptable marking. The letters in the marking should be clear enough so that the ultimate purchaser is able to read them without strain. No single factor is considered conclusive in determining whether a marking meets the legibility and conspicuousness requirements of 19 CFR 134.41 and 19 U.S.C. 1304. Instead, it is the combination of these factors which will determine whether the marking on an article is acceptable.

In addition, the location of the marking should be in a place on the article where the ultimate purchaser could expect to find the marking or where he/she could easily notice it from a casual inspection of the article. The ultimate purchaser should not have to hunt or carefully search for the marking.

After reviewing the sample pipe and petition with its accompanying letters, we find that the marking on the sample cast iron soil pipe on the end or lip of the pipe by die stamped lettering, does not meet these criteria discussed above for a legible marking in a conspicuous place. Therefore, the sample pipe is not marked with its country of origin in accordance with 19 U.S.C 1304 and implementing regulations at 19 CFR 134.41. We give great weight to the statements from plumbing subcontractors and general contractors that they are not able to ascertain the country of origin of foreign pipe from the present marking on the edge of the pipe. These pipes are generally sold in lengths of 5 to 10 feet so that a marking on the end of the pipe is not easily noticed. The pipes can weigh up to 85 pounds, making it difficult to lift the pipe to find the marking. In addition, the pipes are usually sold and delivered in large stacks. The marking is also frequently not visible because the end of the pipes with the marking is often pressed up against a wall.

The location of the marking on the end of the pipe is also a problem because when the pipes are cut so that they can be installed at a particular job site, the end of the pipe with the country of origin may be cut off. Therefore, the country of origin marking may not be present on the pipe that is prepared for installation. Accordingly, we conclude that the edge or end of the sample cast iron soil pipe is not a conspicuous location for the country origin marking because the marking is not easily noticed from a casual inspection.

Although the country of origin marking on the sample pipe, "Venezuela", can be read, it is by no means a clear marking. We believe that when the marking is covered with tar, it will not be readily noticeable and it will be virtually impossible to read. Therefore, we find that the marking on sample pipe is not legible.

With respect to the method of marking, the petitioners contend that 4 out of the 5 methods of statutory marking are technically infeasible or will not produce a satisfactory marking. It is claimed that only continuous paint stenciling will produce markings on the pipe which are legible and conspicuous. Despite publishing a notice in the Federal Register, we have received no comments to dispute the petitioner's claim that out of the 5 statutory methods of marking, only paint stenciling can produce a

legible and conspicuous marking. Nevertheless we cannot conclude that the absence of such comments in itself is a sufficient basis for Customs to prescribe this marking to the exclusion of the four other types of marking specifically allowed under the statute.

The petitioners point out that Customs has previously mandated paint stenciling when the statutory methods of marking would produce an illegible marking. For example in T.D. 86–15, (51 FR 4559 (1986)), carbon and low alloy steel tubing was required to be marked by paint stenciling "because the statutory methods of marking would be illegible on the relatively rough surfaces of articles."

However, we believe that the circumstances presented at the time T.D. 86–15 was issued were different from the current situation. At that time, 19 U.S.C. 1304(c) permitted no alternative methods for marking pipes, whereas the statute as amended by Pub. L. 99–514 in 1986 now allows alternative methods for marking of pipe when it is commercially or technically infeasible to mark by the prescribed statutory methods if the alternative methods are equally as permanent. Therefore, Customs will permit the use of any statutory prescribed method of marking so long as the marking as applied to a given article is sufficiently legible, permanent and in a conspicuous place. However, if the other statutory methods of marking will not result in the pipes being legibly marked in a conspicuous location so that the ultimate purchaser will be informed about their country of origin, the marking of cast iron soil pipe must be done by the fifth statutory method of marking, continuous paint stenciling.

Conclusion and Delayed Effective Date

The marking on the sample cast iron soil pipes by die stamping at the end of the pipe is not in a conspicuous place and is not legible, and therefore is not acceptable. In order to ensure that ultimate purchasers of these articles are informed about the articles' country of origin, the marking must be legible and be in a conspicuous location.

An article will be considered cast iron soil pipe, like the sample pipe, and will be covered by this determination if the pipe is made of cast iron and is generally used for drain, waste, or vent purposes. The pipe may be either "hub & Spigot" or "no hub" with or without a bituminous coating.

19 U.S.C. 1516(b) and the implementing regulation at 19 CFR 175.22(a), provide that merchandise entered for consumption or withdrawn from warehouse for consumption thirty days after the date of publication of such notice to the petitioner is published in the weekly Customs Bulletin shall be appraised, classified, or assessed as to the rate of duty in accordance with the published decision. Therefore, the effective date of this decision will be delayed for 30 days from the date that this determination is published in the Customs Bulletin. After that date, cast iron soil pipe, like the sample submitted to Customs in connection with this petition, entered for consumption or withdrawn from warehouse for consumption and not marked to indicate the country of origin

consistent with this decision and other marking requirements of the Tariff Act and Customs Regulations shall be considered not legally marked and will not be permitted to be imported in the United States. Marking duties will be assessed on any cast iron soil pipes, that are not properly marked prior to the liquidation of the entries.

AUTHORITY

This notice is published in accordance with section 175.22(a), Customs Regulation (19 CFR 175.22(a)).

DRAFTING INFORMATION

The principal drafter of this document was Robert Dinerstein, Office of Regulations and Rulings, U.S. Customs Service. Personnel from other Customs offices participated in its development.

GEORGE J. WEISE,
Commissioner of Customs.

Approved: October 24, 1994.

DENNIS M. O'CONNELL,
Acting Deputy Assistant Secretary of the Treasury.

[Published in the Federal Register, November 15, 1994 (59 FR 58771)]

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19 CFR Part 171

(T.D. 94–89)

PENALTY GUIDELINES APPLICABLE TO TRANSSHIPPED TEXTILES AND TEXTILE PRODUCTS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the revised penalty guidelines pertaining to section 592 of the Tariff Act of 1930, as amended, by adopting the interim rule that added, as an example of an aggravating factor in arriving at a final administrative penalty decision, violations involving the illegal importation and entry of transshipped textiles and textile products. This amendment will enhance the U.S. textile import program and other programs or laws administered or enforced by Customs which involve a determination of the country of origin of imported merchandise.

EFFECTIVE DATE: Final rule is effective on November 10, 1994. The final rule is applicable to all textiles and textile products entered or withdrawn from warehouse for consumption, on or after November 10, 1994.

FOR FURTHER INFORMATION CONTACT: Robert Pisani, Penalties Branch, Office of Regulations and Rulings (202–482–6950).

SUPPLEMENTARY INFORMATION:

BACKGROUND

Customs is confronted with a continuing problem involving textiles and textile products which, after exportation from their country of origin, are transshipped through a second country, thereby facilitating a false or otherwise unlawful statement, act, or omission regarding the country of origin of the merchandise when ultimately imported and entered in the United States. Such statements, acts or omissions may impinge on a number of programs or laws administered or enforced by Customs, including country of origin marking requirements, textile quota limitations and visa requirements under the U.S. textile import program, duty assessment and collection, and collection of trade statistics. The consequences of such unlawful statements, acts or omissions may include interference with the consumer's right to make an informed decision regarding a prospective purchase, undermining of bilateral and multilateral textile agreements to which the United States is a party and with resulting injury to domestic producers of textiles and textile products, loss of revenue, and inability to maintain proper trade statistics to support overall U.S. trade policy and analysis.

Under section 592 of the Tariff Act of 1930, as amended (19 U.S.C. 1592), a penalty may be assessed against any party who has committed fraud, gross negligence or negligence in connection with the unlawful entry of any merchandise in the United States, including textiles and textile products that have been transshipped in the circumstances described above. Provisions relating to the filing of petitions, and action upon petitions, for relief from fines, penalties and forfeitures incurred under laws administered by Customs, including penalties under section 592, are set forth in Part 171 of the Customs Regulations (19 CFR Part 171). Appendix B to Part 171 sets forth Revised Penalty Guidelines under section 592. Although Appendix B is not intended to have regulatory effect, it represents the official Customs position regarding the standards that are generally applicable to the administrative review of petitions for remission or mitigation of penalties incurred under section 592. Appendix B includes, in section (G), certain factors that may be determined by Customs to be aggravating factors in arriving at a final administrative penalty decision. Appendix B is currently undergoing review within Customs with a view to publication of a proposed revision of those guidelines, with opportunity for public comment, in the near future.

Notwithstanding the upcoming revision of Appendix B to Part 171 and the intended solicitation of public comments thereon, Customs determined that immediate action should be taken in a penalty mitigation context to address the textile and textile products transshipment problem described above. Customs notes that transshipments have resulted in material false statements, acts or omissions regarding the

country of origin of the imported merchandise, including false designations of origin. Consequently, it is Customs position that transshipment must be susceptible to treatment as an aggravating factor in arriving at a final mitigated section 592 penalty decision under Part 171 of the regulations.

On March 30, 1994, Customs published as T.D. 94–29 an interim rule in the Federal Register (59 FR 14745) to amend section (G) of Appendix B to Part 171 by adding a reference to "transshipment in the case of textiles and textile products affecting a country of origin determination" as an aggravating factor. Although this change was effective for merchandise entered, or withdrawn from warehouse for consumption, on or after April 1, 1994, Customs stated that it would consider any comments submitted.

Customs received eleven comments in response to the interim rule. The comments received, and Customs responses to them, where appropriate, are set forth below.

COMMENT ANALYSIS

The comments received ostensibly fell into two categories: those unequivocally endorsing the interim rule as written (three comments); and those opposing the interim rule or seeking to limit its application (eight comments).

Comments Supporting the Interim Rule:

The three commenters supporting the interim rule expressed concern over Customs ability to combat transshipment resulting in an unlawful entry of textiles and textile products, and were of the opinion that the interim rule, as written, would serve as a useful deterrent to such unlawful practices.

Comments Opposing the Interim Rule:

Regarding the eight commenters opposing the interim rule or seeking to limit its application, three claimed that the interim rule unfairly discriminated against textile importers by holding such importers to a higher standard of care than that required of parties importing other merchandise. Two of these three commenters indicated that it was illogical for Customs to consider the act of transshipment an aggravating factor when, in fact, the act of transshipment constitutes the violation in question or, at least, an element of the violation. Put another way, these two commenters were of the opinion that aggravating factors cannot constitute the violation in question. Otherwise, according to one of these commenters, undervaluation logically would have to be an aggravating factor in cases involving understatement of value.

Two other commenters stated that the interim rule should be limited in its application to those instances where the importer had actual knowledge of the improper transshipment of the textile products at issue.

Regarding the remaining three commenters fully opposed to the interim rule, they objected on the basis that the rule constituted the

imposition of unfair additional penalties and that mitigation in such cases would become meaningless. These commenters felt that existing guidelines were adequate and that the interim rule was not in keeping with the spirit of the recently enacted Customs Modernization Act. One of these commenters also expressed concern that the rule would permit Customs to raise the assessed penalty in cases involving transshipment. Finally, one of the commenters indicated that rules such as the interim rule have forced the closure of his apparel importing company.

Customs Response:

Customs acknowledges the concerns expressed by those commenters opposed to the interim rule on the basis that the rule discriminates against textile importers, but the importing community and domestic industry must, in Customs opinion, acknowledge the dilemma faced by the agency, namely, balancing the interests of the importer against the explosion of illegal transshipments to the United States. Aside from the obvious negative impact such shipments can have on domestic industry, illegally transshipped goods deceive U.S. consumers regarding the country of origin of imported merchandise, as well as distort the application of bilateral agreements with our trading partners. When faced with similar situations, Customs has had to take enforcement actions which focus on specific commodities or types of merchandise. In effect, the interim rule provides a warning to textile importers about the threat of illegal transshipment and suggests that such importers take extra pre-importation measures to ensure the accuracy of the country of origin of the products in question.

Contrary to some commenters' views, it is clear that these textile transshipments do not, *per se*, constitute a violation of section 1592. Such transshipments may, or may not, result in false statements concerning the country of origin on entry documents, or goods being falsely marked with an incorrect country of origin. Consequently, a violation occurs at the time when the transshipped textile goods arrive for entry in the United States *and are* falsely marked, or the entry documents contain culpable, material false statements, omissions or acts. In other words, with respect to the circumstances under discussion, the act of textile transshipment does not, in and of itself, constitute a violation of section 1592.

With respect to those commenters who recommended implementation of the rule provided that it only apply to those instances where the importer has actual knowledge of the improper transshipment, Customs notes that application of this aggravating factor would first require that Customs establish a violation of section 1592. If the importer is an innocent party to the transaction, then that importer will not be considered culpable, and therefore, cannot be charged with a violation of section 1592.

Customs also would like to clear up what appears to be a misunderstanding regarding the meaning of the term "aggravating factor" and the practical impact of the presence of an aggravating factor in a penalty

situation. First, as indicated above, aggravating factors alone do not constitute a violation of section 1592. Second, contrary to some commenters' belief, the presence of an aggravating factor *does not* increase or decrease the asserted level of culpability set forth in Customs section 1592 prepenalty and/or penalty notices. For example, in the case of an importer's material grossly negligent false statement of origin on an entry document, Customs does not increase the asserted level of culpability to fraud because the goods were transshipped. Rather, in arriving at the administrative disposition in a penalty action, Customs treats the presence of an aggravating factor (designated as such in the Customs guidelines) as an offset to the presence of a mitigating factor. It should also be noted that because the interim rule involves Customs penalty guidelines and such guidelines are neither statutory nor regulatory, *per se*, certain circumstances may warrant deviation from the ordinary application of the guidelines.

Customs also is of the opinion that the interim rule is, in fact, in keeping with the spirit of the Customs Modernization provisions (Title VI) of the North American Free Trade Agreement Implementation Act (the Act), Public Law 103–182, 107 Stat. 2057 (December 8, 1993). Both the language of the Act and its legislative history clearly set forth the concepts of "shared responsibility" and "informed compliance" as critical to its effectiveness and application. In the instant situation, the interim rule is one of the measures Customs intends to use to address the significant problem of illegal transshipment. The interim rule informs the textile importer that he or she can avoid application of the interim rule by taking adequate measures *prior to importation* to attempt to ensure the accuracy and completeness of the information provided to Customs at the time of entry, including proper marking or other indication of the country of origin of the articles. In light of the problems associated with illegal transshipment, Customs believes that it is not unreasonable to expect textile importers to exert diligence in attempting to verify the source of their goods prior to importation commensurate with the statutory requirement to exercise reasonable care in presenting documentation to Customs during the entry process. If a textile importer can demonstrate that such measures were taken (i.e., the importer was not culpable and acted with reasonable care), then there can be no violation of section 1592 because culpability is a requisite element of such a violation. Put another way, the interim rule does not apply to those textile importers who responsibly take such adequate measures prior to importation.

In view of the foregoing, Customs is adopting the text of the interim rule as final without change.

The Regulatory Flexibility Act, and Executive Order 12866

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.)*, it is certified that the amendment will not have a significant economic impact on a substantial number of small entities. This docu-

ment does not meet the criteria for a "significant regulatory action" as specified in Executive Order 12866.

LIST OF SUBJECTS IN 19 CFR PART 171

Administrative practice and procedure, Customs duties and inspection, Law enforcement, Penalties, Seizures and forfeitures.

AMENDMENT TO 19 CFR CHAPTER I

For the reasons stated above, the interim rule amending part 171 of the Customs Regulations (19 CFR part 171), which was published at 59 FR 14745–14746 on March 30, 1994 (T.D. 94–29), is adopted as a final rule without change.

MICHAEL H. LANE,
Acting Commissioner of Customs.

Approved: October 24, 1994.
DENNIS M. O'CONNELL,
Acting Deputy Assistant Secretary of the Treasury.

[Published in the Federal Register, November 10, 1994 (59 FR 55997)]

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19 CFR Part 133

(T. D. 94–90)

TECHNICAL CORRECTIONS TO THE CUSTOMS REGULATIONS RELATING TO CUSTOMS MODERNIZATION

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations by making certain technical corrections necessitated by one of the Customs Modernization provisions of the North American Free Trade Agreement Implementation Act, which went into effect when signed on December 8, 1993. The changes involve the time period that Customs must retain goods seized for certain intellectual property violations before the goods can be sold.

EFFECTIVE DATE: November 10, 1994.

FOR FURTHER INFORMATION CONTACT: George F. McCray, Intellectual Property Rights Branch, at 202–482–6960.

SUPPLEMENTARY INFORMATION:

BACKGROUND

The Customs Modernization provisions contained in Title VI of the North American Free Trade Agreement Implementation Act of 1993,

Public Law 103–182, 107 Stat. 2057 (the NAFTA Act), went into effect when the NAFTA Act was signed on December 8, 1993 (§ 692 of the NAFTA Act). One of the changes effected by this legislation was an amendment to 19 U.S.C. 1526(e)(3), which involves the time period for retention of goods seized by Customs for certain intellectual property rights violations. Section 663 of the NAFTA Act amended 19 U.S.C. 1526(e)(3) to allow Customs to sell merchandise bearing a counterfeit trademark at a public auction 90 days after the forfeiture of the merchandise if Customs has determined that a need for the merchandise has not been established by any federal, state, or local government or eleemosynary institution. Prior to this amendment, the statute had required Customs to wait more than one year before the sale of the merchandise by appropriate Customs officers.

As a result of the changes in 19 U.S.C. 526(e)(3), corresponding changes are required in the Customs Regulations, in § 133.52(c)(3) (19 CFR 133.52(c)(3)).

Discussion of Changes

In 19 CFR 133.52(c)(3), the time period is changed from "one year" to "90 days," and the entity responsible for the sale is changed from "the Commissioner or his designee" to "the Customs Service."

Inapplicability of Public Notice and Comment Requirements, Delayed Effective Date Requirements, the Regulatory Flexibility Act, and Executive Order 12866

Inasmuch as these amendments merely conform the Customs Regulations to existing law, pursuant to 5 U.S.C.(a)(2) and (b)(B), good cause exists for dispensing with notice and public procedure thereon as unnecessary. For the same reason, good cause exists for dispensing with the requirement for a delayed effective date, under 5 U.S.C. (a)(2) and (d)(3). Since this document is not subject to the notice and public procedure requirements of 5 U.S.C. 553, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.).* This amendment does not meet the criteria for a "significant regulatory action" as specified in Executive Order 12866.

Drafting Information

The principal author of this document was Janet L. Johnson, Regulations Branch. However, personnel from other offices participated in its development.

List of Subjects 19 CFR Part 133

Copyright, Customs duties and inspection, Imports, Reporting and recordkeeping requirements, Trade names, Trademarks.

Amendments to the Regulations

Part 133 of the Customs Regulations (19 CFR Part 133) is amended as set forth below:

PART 133—TRADEMARK, TRADE NAMES, AND COPYRIGHTS

1. The general authority citation for Part 133 continues to read and specific authority for § 133.52 is added to read as follows:

Authority: 17 U.S.C. 101, 601, 602, 603; 19 U.S.C. 66, 1624; 31 U.S.C. 9701.

* * * * * * *

Section 133.52 also issued under 19 U.S.C. 1526;

* * * * * * *

2. Section 133.52(c)(3) is amended by removing the words "1 year" in the first sentence and adding in their place "90 days"; and removing the words "Commissioner or his designee" wherever they appear and adding in their place the words "Customs Service".

GEORGE J. WEISE,
Commissioner of Customs.

Approved: October 24, 1994.

DENNIS M. O'CONNELL,
Acting Deputy Assistant Secretary of the Treasury.

[Published in the Federal Register, November 10, 1994 (59 FR 55996)]

U.S. Customs Service

General Notices

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, DC, November 9, 1994.

The following documents of the United States Customs Service, Office of Commercial Operations, Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and U.S. Customs Service field offices to merit publication in the CUSTOMS BULLETIN.

HARVEY B. FOX,
Director,
Office of Regulations and Rulings.

REVOCATION OF CUSTOMS RULING LETTER RELATING TO CUSTOMS BROKERS CONVICTED OF CRIMES

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of revocation of Entry Branch ruling letter.

SUMMARY: Pursuant to section 625 Tariff Act of 1930 (19 U.S.C. § 1625), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking a ruling pertaining to whether a broker may employ a person who has been convicted and sentenced under the New Federal Sentencing Guidelines of uttering an altered bill of lading. Notice of the proposed revocation was published October 5, 1994, in the CUSTOMS BULLETIN, Volume 28, Number 39/40.

EFFECTIVE DATE: This decision is effective for merchandise entered, or withdrawn from warehouse for consumption on or after January 23, 1995.

FOR FURTHER INFORMATION CONTACT: Sheri Rosenow, Entry Rulings Branch, 202–482–7040.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On October 5, 1994, Customs published a notice in the CUSTOMS BULLETIN, Volume 28, Number 39/40, proposing to revoke HQ 223908

(8/27/92), issued by the Office of Regulations and Rulings, Headquarters, U.S. Customs Service, pertaining to whether a broker may employ a person who has been convicted and sentenced under the New Federal Sentencing Guidelines of uttering an altered bill of lading. One comment was received from an interested party opposing the revocation.

Pursuant to section 625, Tariff Act of 1930 (19 U.S.C. § 1625) as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking HQ 223908. Attached is a copy of Customs Headquarters Ruling Letter 225345 which revokes HQ 223908. HQ 225345 holds that a person who has been convicted of uttering an altered bill of lading under 49 U.S.C. App. 121, and sentenced in this case to a fine of five thousand dollars and two years on probation, is guilty of a felony under the New Federal Sentencing Guidelines. Under 19 CFR 111.53 a customs broker may not employ a person who has been convicted of a felony without the written approval of the Commissioner of Customs.

Publication of rulings or decisions pursuant to section 625 does not constitute a change of practice or position in accordance with section 177.10(c)(1), Customs Regulations (19 CFR 177.10(c)(1)).

Dated: November 8, 1994.

WILLIAM G. ROSOFF,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, November 8, 1994.

MR. ELON A. POLLACK
POLITIS, POLLACK & DORAM
3255 Wilshire Blvd., Suite 1688
Los Angeles, CA 90010

Re: Employment by a Customs broker of a person who has been convicted of uttering an altered bill of lading; 49 U.S.C. App. 121; 19 U.S.C. § 1641(d)(1)(E); 18 U.S.C. § 1; 18 U.S.C. § 3559.

DEAR MR. POLLACK:

This is in response to your letter dated April 21, 1992, concerning the employment, by a Customs broker, of a person who has been convicted of uttering an altered bill of lading.

Facts:

Company X is a licensed corporate Customs Broker in the San Francisco District. An employee entered a guilty plea for violation of Title 49 U.S.C. App. 121, uttering an altered bill of lading, in the United States District Court. Apparently in filling out a document he used the date of delivery of containerized cargo to a terminal rather than the actual date of

loading on board a vessel. The offense was committed in September 1988. The employee was sentenced on April 8, 1992, to a fine of five thousand dollars, two years on probation, and 120 hours of community service. The court also recommended that this individual retain his brokers license. Although the statute provides that a violation of 49 U.S.C. App. 121 is a misdemeanor, the attorneys for the brokerage company are concerned that the sentence received by the employee may cause the offense to be considered a felony under Federal law.

According to 19 U.S.C. § 1641(d)(1)(E), a broker may not employ anyone who has been convicted of a felony without written permission of the Secretary of the Treasury. This authority has been delegated to Customs. See 19 CFR 111.53(e). The brokerage company wishes to determine if written permission is necessary to continue the employment of the individual.

Pursuant to section 625, Tariff Act of 1930 (19 U.S.C. § 1625) as amended by section 623 of the title VI—Customs Modernization—of the North American Free trade Agreement Implementation Act (Pub. L. 103–182, Stat. 2057), a notice was published in the CUSTOMS BULLETIN, Volume 28, Number 39/40, proposing to revoke HQ 223908, issued August 27, 1992, pertaining to whether a broker may employ a person who has been convicted and sentenced under the New Federal sentencing Guidelines of uttering an altered bill of lading.

Issue:

Whether the employee in question has been convicted of a misdemeanor or a felony for purposes of 19 U.S.C. § 1641(d)(1)(E).

Law and Analysis:

According to 19 U.S.C. § 1641(d)(1)(E) the Secretary may impose a monetary penalty or revoke or suspend a license or permit of any customs broker if the broker has knowingly employed, or continues to employ, any person who has been convicted of a felony, without the written approval of such employment from the Secretary.

The employee was convicted of uttering an altered bill of lading under 49 U.S.C. App. 121 which provides as follows:

> Any person who, knowingly or with intent to defraud, falsely makes, alters, forges, counterfeits, prints or photographs any bill of lading purporting to represent goods received for shipment among the several States or with foreign nations, or with like intent utters or publishes as true and genuine any such falsely altered, forged, counterfeited, falsely printed or photographed bill of lading, knowing it to be falsely altered, forged, counterfeited, falsely printed or photographed * * * or transfers for value a bill which contains a false statement as to the receipt of the goods, or as to any other matter, or who, with intent to defraud, violates, or fails to comply with, or aids in any violation of, or failure to comply with any provision of this chapter, shall be guilty of a misdemeanor, and, upon conviction, shall be punished for each offense by imprisonment not exceeding five years or by a fine not exceeding $5000, or both.

The brokerage company is concerned that although the statute specifically provides that a person who violates the statute shall be guilty of a misdemeanor, the severity of the sentence may elevate the employee's conviction to a felony. 18 U.S.C. section 1 states that, notwithstanding any Act of Congress to the contrary, any offense punishable by imprisonment for a term exceeding one year is a felony. This provision was repealed (Pub. L. 98–473, Title II, section 218(a), Oct. 12, 1984, 98 Stat. 2027). It applies retroactively only to offenses that were committed before November 1, 1987. It appears from the documents submitted that the employee's offense was committed in September of 1988.

The provision, 18 U.S.C. § 1, was replaced by new Federal Sentencing Guidelines, 18 U.S.C. § 3559, which are the same except that the provision states that the guidelines apply only to an offense that is not specifically classified by a letter grade. Although 49 U.S.C. App. 121 specifically states that conviction under this statute is to be considered a misdemeanor, it does not list a letter grade and therefore the new Federal Sentencing Guidelines apply.

We are aware from the transcripts that the judge was very concerned that the employee should keep his job. However, we have been instructed by the Customs Office of Chief Counsel, based on the advice of the Department of Justice, that in spite of the wishes of the judge and the fact that the statute specifically states that it is a misdemeanor, under section 3559, an offense that is not specifically classified by a letter grade in the section in which it is defined is classified as a Class D felony if the maximum term of imprisonment

authorized is less than ten years but is 5 or more years. Accordingly, we understand that the employee is guilty of a felony under 49 U.S.C. App. 121 and 18 U.S.C. § 3559. We have been advised that there have been no relevant court cases since the new Guidelines went into effect. The court cases decided under 18 U.S.C. 1, (See United States v. Schutte, 610 F. 2d 698 (10th Cir. 1979) and Loos v. Hardwick, 224 F.2d 442 (5th Cir. 1955)), are still considered to be valid precedent.

Holding:

The offense for which the employee was convicted is a felony under the new Federal Sentencing Guidelines, 49 U.S.C. App. 121. Therefore, unless the brokerage company receives special permission from the Commissioner it may not employ the individual in question.

In accordance with section 625, this ruling will become effective 60 days from its publication in the CUSTOMS BULLETIN. Publication of rulings or decisions pursuant to section 625 does not constitute a change of practice or position in accordance with section 177.10(c)(1), Customs Regulations (19 CFR 177.10(c)(1)).

WILLIAM G. ROSOFF,
(for John Durant, Director,
Commercial Rulings Division.)

MODIFICATION OF CUSTOMS RULING LETTER RELATING TO TARIFF CLASSIFICATION OF "PAXIL", PAROXETINE HYDROCHLORIDE PUT UP IN MEASURED DOSES OR IN FORMS OR PACKINGS FOR RETAIL SALE

ACTION: Notice of modification of a tariff classification ruling.

SUMMARY: Pursuant to section 625 of the Tariff Act of 1930 (19 U.S.C. 1625), as amended by section 623 of Title VI (customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that customs is modifying a ruling pertaining to the tariff classification of "Paxil", paroxetine hydrochloride put up in measured doses or in forms or packings for retail sale. Notice of the proposed modification was published October 5, 1994, in the CUSTOMS BULLETIN, Volume 28, Number 39/40.

EFFECTIVE DATE: This decision is effective for merchandise entered, or withdrawn from warehouse, for consumption on or after January 23, 1995.

FOR FURTHER INFORMATION CONTACT: Edward A. Bohannon, Food & Chemicals Classification Branch, (202) 482–7020.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On October 5, 1994, Customs published a notice in the CUSTOMS BULLETIN, Volume 28, Number 39/40, proposing to modify Customs Ruling Letter (DD) 878244 issued September 25, 1992, by the Area Director, JFK Airport, wherein Customs held that paroxetine was classified

under subheading 2934.90.2500, Harmonized Tariff Schedule of the United States (HTSUSA) a provision for other heterocyclic compounds, aromatic or modified aromatic, drugs. Customs also held in DD 878244 that "Paxil", paroxetine hydrochloride in dosage form, was classified under subheading 3004.90.6035, a provision for antidepressants, tranquilizers, and other psychotherapeutic agents put up in measured doses or in forms or packings for retail sale.

No comments have been received.

Pursuant to section 625, Tariff Act of 1930 (19 U.S.C. 1625), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), this notice advises interested parties that Customs is modifying DD 878244 in regard to the classification of "Paxil", paroxetine hydrochloride put up in measured doses or in forms or packings for retail sale. Accordingly, Customs is issuing a ruling letter to reflect proper classification of "Paxil" under subheading 3004.40, HTSUSA, a provision for medicaments put up in measured doses or in forms or packings for retail sale, containing alkaloids or derivatives thereof. The ruling modifying DD 878244 is set forth in Attachment A to this document.

Publication of rulings or decisions pursuant to section 625 does not constitute a change of practice or position in accordance with section 177.10(c)(1), Customs Regulations (19 CFR 177.10(c)(1)).

Dated: November 8, 1994.

JOHN DURANT,
Director,
Commercial Rulings Division.

[Attachment]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, November 8, 1994.

CLA–2 CO:R:C:F 953124 EAB
Category: Classification
Tariff No. 2934.90.2500 and 3004.40.0030

MR. DESMOND FLYNN
MANAGER, IMPORTS & DOMESTIC TRAFFIC
SMITHKLINE BEECHAM PHARMACEUTICALS
One Franklin Plaza
Philadelphia, PA 19101

Re: "Paxil"; paroxetine (CAS No. 61869–08–7) not listed; heading 2939 vegetable alkaloid; DD 878244 modified.

DEAR MR. FLYNN:

This is in reply to your letter dated November 19, 1992, requesting reconsideration of Customs Ruling Letter DD 878244, dated September 25, 1992, wherein the compounds

known as "Paxil" and paroxetine were respectively classified under subheadings 3004.90.6035 and 2934.90.2500, Harmonized Tariff Schedule of the United States Annotated (HTSUSA). We have reviewed that ruling and have determined that the classification of "Paxil" was incorrect. The correct classification of "Paxil", paroxetine hydrochloride put up in measured doses or in forms or packings for retail sale, is as follows.

Facts:

Paroxetine, CAS No. 61869–08–7, a number not listed in the Chemical Appendix to the Tariff Schedule and the preferred chemical name of which is *trans*-(-)-3-[(1,3-benzodioxol-5-yloxy)methyl]-4-(4-fluorophenyl)piperidine, is a synthetic, aromatic compound containing both oxygen and nitrogen heterocyclic groups. It is an antidepressant and acts as a serotonin re-uptake inhibitor.

Pending FDA approval, "Paxil" is the name under which dosage form paroxetine hydrochloride is to be marketed.

Pursuant to section 625, Tariff Act of 1930 (19 U.S.C. 1625), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993) (hereinafter "section 625"), notice of the proposed revocation of DD 878244 was published on October 5, 1994, in the CUSTOMS BULLETIN, Volume 28, Number 39/40.

Issue:

Whether "Paxil" is classifiable under subheading 3004.40.0030 or subheading 3004.90.6035, HTSUSA.

Law and Analysis:

Merchandise imported into the U.S. is classified under the HTSUSA. Tariff classification is governed by the principles set forth in the General Rules of Interpretation (GRIs) and, in the absence of special language or context which otherwise requires, by the Additional U.S. Rules of Interpretation. The GRIs and the Additional U.S. Rules of Interpretation are part of the HTSUSA and are to be considered statutory provisions of law for all purposes.

GRI 1, requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes and, unless otherwise required, according to the remaining GRIs taken in order.

The chemical structure of an organic compound that presents a basic nitrogen ring such as pyridine, quinoline, isoquinoline and pyrole is generally referred to in the scientific literature as an "alkaloid," or a "vegetable alkaloid." Piperidine, found in small quantities in black pepper, is such a "vegetable alkaloid." Neither neurine nor procaine, *The Merck Index* (11th ed.) at 1025, 1230, exhibits a heterocyclic ring structure containing at least one nitrogen as the heteroatom, yet the former, neurine, is an "animal alkaloid," and the latter, "procaine,11 is a "synthetic alkaloid," *Dorland's Illustrated Medical Dictionary* (25th Ed. 1992), alkaloid at 56.

Heading 2939 describes, *inter alia, "vegetable* alkaloids, natural or reproduced by synthesis, and * * * [their] other derivatives." Paroxetine is neither naturally occurring nor reproduced by synthesis; therefore, it may not be classified under heading 2939. We are of the opinion, however, that it is described by the term "alkaloid," since it contains a classic "vegetable alkaloid" ring structure, namely, piperidine.

Subheading 3004.40.0030, HTSUSA, describes in part medicaments containing alkaloids or derivatives thereof but not containing hormones, other products of heading 2937 or antibiotics, other, medicaments primarily affecting the central nervous system, antidepressants. It has been suggested that this subheading does not describe paroxetine because the compound is not a natural or synthetically reproduced vegetable alkaloid or derivative. We disagree with this suggestion. As a general proposition, heading 2939 is limited as we noted above; subheading 3004.40 contains no such limitations. The two provisions on their face are quite different, and although "where the same word or phrase is used in different parts of the same statute, it will be presumed, in the absence of any clear indication of a contrary intent, to be used in the same sense throughout the statute," *Mita Copystar Corporation v. U.S.*, ____ CIT ____, (1993), Slip Op. 93–76, we find that there is a clear indication that different meanings are intended:

> 2939—Vegetable alkaloids, natural or reproduced by synthesis, and their * * * other derivatives.
>
> 3004.40—* * * alkaloids or derivatives thereof * * *.

We are of the opinion that subheading 3004.40 is much broader in scope than is heading 2939 and covers all alkaloids, whether or not vegetable, whether or not natural, whether or not synthetic derivatives of naturally occurring such compounds. The scientific literature describes three types of alkaloids, namely, "vegetable," "animal" and "synthetic," and, whereas paroxetine not only contains a piperidine ring structure but has the preferred, not merely accepted, chemical name of *trans*-(-)-3[(1,3-benzodioxol-5-yloxy) methyl]-4-(4-fluorophenyl)piperidine, we are of the opinion that "Paxil" is classifiable under subheading 3004.40, HTSUSA.

Holding:

DD 878244 is modified.

Paroxetine is classifiable under subheading 2934.90.2500, HTSUSA, a provision for other heterocyclic compounds; other; aromatic or modified aromatic; other; drugs. This classification does not represent a change.

"Paxil" is classifiable under subheading 3004.40.0030, HTSUSA, a provision for "Medicaments (excluding goods of heading 3002, 3005 or 3006) consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses or in forms or packings for retail sale: Containing alkaloids or derivatives thereof but not containing hormones, other products of heading 2937 or antibiotics, Other: Medicaments primarily affecting the central nervous system: Antidepressants, tranquilizers and other psychotherapeutic agents", subject to a general column one rate of duty of 3.4 percent *ad valorem*.

In accordance with section 625, this ruling will become effective 60 days from its publication in the CUSTOMS BULLETIN. Publication of rulings or decisions pursuant to section 625 does not constitute a change of practice or position in accordance with section 177.10(c)(1), Customs Regulations (19 CFR 177.10(c)(1)).

JOHN DURANT,
Director,
Commercial Rulings Division.

REVOCATION OF CUSTOMS RULING LETTER RELATING TO TARIFF CLASSIFICATION OF A RIDING SHOE

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of revocation of tariff classification ruling letter.

SUMMARY: Pursuant to section 625, Tariff Act of 1930 (19 U.S.C. 1625), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act. Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), this notice advises interested parties that Customs is revoking a ruling pertaining to the tariff classification of a riding shoe. Notice of the proposed revocation was published October 5, 1994, in the CUSTOMS BULLETIN.

EFFECTIVE DATE: This decision is effective for merchandise entered, or withdrawn from warehouse for consumption on or after January 23, 1995.

FOR FURTHER INFORMATION CONTACT: Donald F. Cahill, Metals and Machinery Classification Branch, (202–482–7030).

SUPPLEMENTARY INFORMATION:

BACKGROUND

On October 5, 1994, Customs published a notice in the CUSTOMS BULLETIN, Volume 28, Number 39/40, proposing to revoke DD 894043 issued

on February 7, 1994, by the Acting District Director of Customs, Portland, Oregon. In DD 894043 Customs ruled that a "STEEDS" riding shoe was classified under subheading 6403.19.60, Harmonized Tariff Schedule of the United States (HTSUS), which provides for footwear with outer soles of rubber, plastics, leather or composition leather and uppers of leather, sports footwear, other, for other persons. No comments were received in response to the notice.

Pursuant to section 625, Tariff Act of 1930 (19 U.S.C. 1625), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), hereinafter section 625), this notice advises interested parties that Customs is revoking DD 894043 to reflect the proper classification of this footwear under subheading 6403.91.90, HTSUS, which provides for footwear with outer soles of rubber, plastics, leather or composition leather and uppers of leather, other footwear, covering the ankle, other, for other persons. Headquarters Ruling Letter 956942 revoking DD 894043, is set forth in Attachment A to this document.

Publication of rulings or decisions pursuant to section 625 does not constitute a change of practice or position in accordance with section 177.10(c)(1), Customs Regulations (19 CFR 177.10(c)(1)).

Dated: November 7, 1994.

MARVIN M. AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachment]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, November 7, 1994.

CLA–2 CO:R:C:M 956942 DFC
Category: Classification
Tariff No. 6403.91.90 and 6403.91.60

MS. SANDRA KUTZ
WORLD COMMERCE SYSTEMS, LTD.
P.O. Box 66593
Chicago, IL 60666

Re: Footwear; riding shoe; DD 894043 revoked; HRL's 955260, 955014.

DEAR MS. KUTZ:

This is in reference to District Ruling Letter (DD) 894043 issued to you on February 7, 1994, by the Acting District Director of Customs, Portland, Oregon, concerning the tariff classification under the Harmonized Tariff Schedule of the United States (HTSUS), of the "STEEDS" riding shoe manufactured in Korea. We have reviewed that ruling and determined that it is in error. Pursuant to section 625, Tariff Act of 1930 (19 U.S.C. 1625) as amended by section 623 of Title VI (Customs Modernization) of the North American Free

Trade Agreement Implementation Act. Pub. L. 103–182, 107 Stat. 2057,2186 (1993) (hereinafter "section 625"), notice of the proposed revocation of DD 894043 was published on October 5, 1994, in the CUSTOMS BULLETIN, Volume 28, Number 39/40. No comments were received in response to this notice.

Facts:

The sample riding shoe submitted has a vamp and toe cap of full grain leather, a quarter, eyestay, back counter, and outside collar of polyurethane coated leather, and an outsole of rubber. Portions of the outside collar pad, an area comprising less than 25% of the external surface area of the upper (ESAU), are of Lycra, a man-made textile material. The coated and uncoated leather constitutes about 75% of the ESAU of the riding shoe. The outsole contains a steel shank wrapped by canvas in the insole board contained in the rubber outsole. In your letter of January 13, 1994, you indicated that the shoe would be imported in ladies and childrens sizes with mens sizes to follow.

In DD 894043 Customs ruled that the "STEEDS" riding shoe is classifiable under subheading 6403.19.60, HTSUS, which provides for footwear with outer soles of rubber, plastics, leather or composition leather and uppers of leather, sports footwear, other, for other persons. The applicable rate of duty for this provision is 10% *ad valorem*.

Issue:

Is the "STEEDS" riding shoe considered "sports footwear" for tariff purposes?

Law and Analysis:

Classification of goods under the HTSUS is governed by the General Rules of Interpretation (GRI's). GRI 1 provides that "classification shall be determined according to the terms of the headings and any relative section or chapter notes, and provided such headings or notes do not otherwise require, according to [the remaining GRI's]." In other words, classification is governed first by the terms of the headings of the tariff and any relative section or chapter notes.

The rationale set forth in DD 894043 for classifying the riding shoe as "sports footwear" was that "[t]he placement of the steel shank, at the point where the medial arch comes into contact with the stirrup surface, implies suitability for riding, a recognized sporting activity."

Subheading note 1 to Chapter 64, HTSUS, reads, as follows:

> 1. For the purposes of subheadings 6402.11, 6402.19, 6403.11, 6403.19 and 6404.11, the expression *"sports footwear"* applies only to:
>
> (a) Footwear which is designed for a sporting activity and has, or has provision for the attachment of spikes, sprigs, cleats, stops, clips, bars or the like;
>
> (b) Skating boots, ski-boots and cross-country ski footwear, wrestling boots, boxing boots and cycling shoes.

It is our position that subheading note 1 to Chapter 64, HTSUS, should be interpreted narrowly. The rationale for our position is that this note limits sports footwear to only the general description set forth in (a) and the enumerated articles in (b). To meet the definition, an article must either meet the criteria set forth in (a) or be one of the enumerated types set forth in (b). See Headquarters Ruling Letter (HRL) 955260 dated November 3, 1993.

The "STEEDS" riding shoe does not qualify for classification as "sports footwear" under note 1(a) to Chapter 64, HTSUS, because the "steel shank" positioned inside the outsole of the shoe is not "like" the spikes, sprigs, cleats, stops, clips, bars" that are cited. As best as we can ascertain, all these have relatively sharp points or edges which are designed to dig into the ground (turf or ice), and appear on the outside of the shoe. See HRL 955014 dated April 11, 1994.

The riding shoe does not qualify for classification as "sports footwear" under note 1(b) to Chapter 64, HTSUS, because it is not one of the types of footwear enumerated therein.

Holding:

The "STEEDS" riding shoe is not considered "sports footwear" for tariff purposes.

The "STEEDS" over-the-ankle riding shoe, in ladies and childrens sizes, is properly classifiable under subheading 6403.91.90, HTSUS, which provides for footwear with outer soles of rubber, plastics, leather or composition leather and uppers of leather, other footwear, covering the ankle, other, for other persons. The applicable rate of duty for this provision is 10% *ad valorem*. If imported in mens, youths and boys sizes, classification would be under subheading 6403.91.60, HTSUS, with duty at the rate of 8.5% *ad valorem*.

Accordingly, DD 84043 is revoked.

In accordance with section 625, this ruling will become effective 60 days after publication in the CUSTOMS BULLETIN. Publication of rulings or decisions pursuant to section 625 does not constitute a change of practice or position in accordance with section 177.10(c)(1), Customs Regulations (19 CFR 177.10(c)(1)).

MARVIN M. AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

REVOCATION OF CUSTOMS RULING LETTER RELATING TO TARIFF CLASSIFICATION OF BRASS PLAQUES

ACTION: Notice of revocation of tariff classification ruling letter.

SUMMARY: Pursuant to section 625, Tariff Act of 1930 (19 U.S.C. 1625), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking a ruling pertaining to the tariff classification of brass plaques under the Harmonized Tariff Schedule of the United States (HTSUS). Notice of the proposed revocation was published on October 5, 1994, in the CUSTOMS BULLETIN, Volume 28, Number 39/40.

EFFECTIVE DATE: Merchandise entered or withdrawn from warehouse for consumption on or after January 23, 1995.

FOR FURTHER INFORMATION CONTACT: Robert Altneu, Office of Regulations and Rulings, Metals and Machinery Classification Branch, (202) 482–7030.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On October 5, 1994, Customs published a notice in the CUSTOMS BULLETIN, Volume 28, Number 39/40, proposing to revoke New York Ruling Letter (NY) 890587, issued on September 27, 1993, by the Area Director of Customs, New York Seaport, in which brass plaques, which were not engraved, were classified under subheading 8306.29.00, HTSUS, the provision for statuettes and other decorative ornaments of base metal. No comments were received in response to the notice.

Pursuant to section 625, Tariff Act of 1930 (19 U.S.C. 1625), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking NY 890587 to reflect the proper classification of the brass plaques under subheading 7419.99.50, HTSUS, as other articles of copper. HQ 956827 revoking NY 890587 is set forth in the Attachment to this document.

Publication of rulings or decisions pursuant to section 625 does not constitute a change of practice or position in accordance with section 177.10(c)(1), Customs Regulations (19 CFR 177.10(c)(1)).

Dated: November 7, 1994.

MARVIN M. AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, November 7, 1994.

CLA–2 CO:R:C:M 956827 RFA
Category: Classification
Tariff No. 7419.99.50

MR. JEFF RHODES
RIRO COMPANY
P.O. Box 275
Lincolnville Center, ME 04850

Re: Unfinished brass plaques; sign-plates; name-plates; articles of copper; headings 7419, 8306, and 8310; EN 83.10; NY 890587, revoked.

DEAR MR. RHODES:

This is in reference to NY 890587, issued to you on September 27, 1993, by the Area Director of Customs, New York Seaport, in which the tariff classification of brass plaques was determined under the Harmonized Tariff Schedule of the United States (HTSUS). Pursuant to section 625, Tariff Act of 1930 (19 U.S.C. 1625), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. No. 103–182, 107 Stat. 2057, 2186 (1993)(hereinafter, "section 625"), notice of the proposed revocation of NY 890587 was published on October 5, 1994, in the CUSTOMS BULLETIN, Volume 28, Number 39/40. No comments were received. Our decision in this matter is set forth below.

Facts:

The merchandise consists of polished and lacquered brass plaques in various shapes and sizes. After importation, the plaques will be engraved and blackened with names and or numbers.

Issue:

Are the brass plaques, which are not engraved, classifiable as decorative ornaments, as sign- or name-plates, or as other articles of copper under the HTSUS?

Law and Analysis:

Classification of merchandise under the HTSUS is in accordance with the General Rules of Interpretation (GRI's), taken in order. GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes.

In NY 890587, dated September 27, 1993, Customs in New York assumed that the subject brass plaques were decorative in nature based upon the description of the plaques in your letter of September 7, 1993. Accordingly, the plaques were classified under subheading 8306.29.00, HTSUS, which provides for: "[b]ells, gongs and the like, nonelectric, of

base metal; statuettes and other ornaments, of base metal; photograph, picture or similar frames, of base metal * * *: [s]tatuettes and other ornaments, and parts thereof: [o]ther * * *." The column one, general rate of duty is 5 percent *ad valorem*.

After receiving additional information from your company on May 5, 1994, Customs has learned that the plaques are not other decorative ornaments, but are intended to be used as sign or name-plates. The plaques, after importation, are engraved and blackened according to the end-user's specifications. Sign plates and name plates are classifiable under subheading 8310.00.00, HTSUS, which provides for: "[s]ign plates, name plates, address plates and similar plates, numbers letters and other symbols, and parts thereof, of base metal, excluding those of heading 9405 * * *."

The Harmonized Commodity Description and Coding System Explanatory Notes (EN) constitute the Customs Cooperation Council's official interpretation of the HTSUS. While not legally binding, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. *See* T.D. 89–80, 54 Fed.Reg. 35127, 35128 (August 23, 1989). EN 83.10, page 1126, states in pertinent part:

> this heading covers base metal plates which bear (by enamelling, varnishing, printing, engraving, perforation, stamping, moulding, embossing, shaping or any other process) words, letters, numbers or designs giving all the essential information required for a sign-plate, name-plate, advertising plate, address-plate or other similar plate. It is a characteristic of such plates that they are normally designed to be permanent fixtures (e.g., road sign-plates, advertising plates, machine name-plates) or to be used many times (e.g., cloakroom tokens and tags).
>
> * * * * * * * *
>
> The heading does not include: (a) [p]lates not bearing letters, numbers or designs, or bearing only particulars incidental to the essential information which is to be added later (e.g., headings 7325, 7326, 7616, 7909) * * *.

Based upon the information provided and the guidance of EN 83.10, we find that the subject brass plates are excluded from classification under heading 8310, HTSUS, because they are not engraved with the essential information at the time of importation. Articles of base metal which are not engraved are classified according to its metal component. The plates are made of brass which is an alloy of copper. Articles of copper are provided for under heading 7419, HTSUS. The subject brass plates which are polished and lacquered are classifiable under subheading 7419.99.50, HTSUS, which provides for other articles of copper which are further worked. Therefore, the classification of the brass plates in NY 890587 is revoked.

Holding:

The brass plates are classifiable under subheading 7419.99.50, HTSUS, which provides for: "other articles of copper: [o]ther: [o]ther: [o]ther: [o]ther * * *." The column one, general rate of duty is 5 percent *ad valorem*.

NY 890587, dated September 27, 1993, is revoked. In accordance with section 625, this ruling will become effective 60 days after publication in the CUSTOMS BULLETIN. Publication of rulings or decisions pursuant to section 625 does not constitute a change of practice or position in accordance with section 177.10(c)(1), Customs Regulations [19 CFR 177.10(c)(1)].

MARVIN M. AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

U.S. Customs Service

Proposed Rulemaking

19 CFR Parts 123 and 148

EXAMINATION OF BAGGAGE

RIN 1515–AB56

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Customs Regulations in order to more clearly reflect Customs statutory authority to open and examine baggage and vehicles without the permission of the owners of the baggage and vehicles. These amendments will make the pertinent Customs regulations consistent with Customs statutory authority to inspect and search baggage and vehicles coming into the United States.

DATE: Comments must be received on or before January 9, 1995.

ADDRESSES: Written comments (preferably in triplicate) may be submitted to and inspected at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, DC 20229. Comments submitted may be inspected at the Regulations Branch, Office of Regulations & Rulings, 1099 14th Street NW., Suite 4000, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lars-Erik Hjelm, Office of the Chief Counsel, U.S. Customs Service, 202–927–6900.

SUPPLEMENTARY INFORMATION:

BACKGROUND

There are several statutory provisions which give the U.S. Customs Service the authority to open and examine baggage. The primary provisions are sections 482, 1461, 1462, 1496, 1581 and 1582 of Title 19, United States Code (19 U.S.C. 482, 1461, 1462, 1496, 1581, and 1582). Section 482 authorizes Customs to search vehicles and persons and to seize undeclared merchandise or merchandise imported contrary to law. Section 1461 authorizes Customs to inspect all merchandise and baggage brought into the United States from contiguous countries. Section

1461 also authorizes Customs officers to require that owners of baggage open it or furnish keys for doing so.

Section 1462 authorizes Customs to inspect the contents of all baggage and vehicles brought into the United States. Section 1462 also authorizes Customs to seize and forfeit the contents of such imported baggage or vehicle which is subject to duty or which constitutes a prohibited importation. Section 1496 authorizes Customs to examine the baggage of people arriving in the United States. Section 1581(a) authorizes Customs to board vessels and vehicles and to examine, inspect and search the vessels or vehicles and everyone and everything thereon. Section 1582 authorizes the Secretary of the Treasury to write regulations concerning the search of persons and baggage. It also authorizes officers or agents of the United States Government to detain and search, under such regulations, any persons coming into the United States from foreign countries.

PROPOSAL

The statutes cited above grant Customs broad authority to inspect, search and seize baggage and vehicles coming into the United States. The current Customs Regulations do not accurately reflect these statutes; therefore, Customs intends to revise the regulations, specifically 19 CFR 123.63 and 19 CFR 148.21, to more clearly reflect the fact that Customs has the statutory authority to open and examine baggage, vehicles and compartments thereof without the permission of the owners. Of course, if at all possible, Customs will ask the owner or operator to unlock the vehicle, compartment or baggage.

COMMENTS

Before adopting this proposal, consideration will be given to written comments timely submitted to Customs. Submitted comments will be available for public inspection in accordance with the Freedom of Inspection Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m., at the Regulations Branch, Office of Regulations and Rulings, 1099 14th Street NW., Suite 4000, Washington, DC.

REGULATORY FLEXIBILITY ACT AND EXECUTIVE ORDER 12866

Based upon the supplementary information set forth above and because the opening and examination of baggage and merchandise is mandated by the statutes cited above, pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.)*, it is certified that the proposed amendments would not have a significant economic impact on a substantial number of small entities. Accordingly, the proposed amendments are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 or 604. This document does not meet the criteria for a "significant regulatory action" as specified in Executive Order 12866.

DRAFTING INFORMATION

The principal author of this document was Janet L. Johnson, Regulations Branch. However, personnel from other offices participated in its development.

LIST OF SUBJECTS

Part 123

Canada, Customs duties and inspection, Freight, International boundaries, Mexico, Motor carriers, Railroads, Reporting and recordkeeping requirements, Vessels.

Part 148

Airmen, Customs duties and inspection, Foreign officials, Government employees, International organizations, Reporting and recordkeeping requirements, Vessels.

PROPOSED AMENDMENTS

For the reasons set forth above, it is proposed to amend parts 123 and 148 of the Customs Regulations (19 CFR 123 and 148) as set forth below.

PART 123—CUSTOMS RELATIONS WITH CANADA AND MEXICO

1. The general authority citation for part 123 and the specific relevant authority citation for § 123.63 continue to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 17, Harmonized Tariff Schedule of the United States), 1624.

* * * * * * *

Subsection 123.63 also issued under 19 U.S.C. 1461, 1462.

* * * * * * *

2. It is proposed to revise § 123.63 to read as follows:

§ 123.63 Examination of baggage from Canada or Mexico.

(a) *Opening vehicle or compartment to examine baggage.* Customs officers are authorized to unlock, open, and examine vehicles and compartments thereof for the purposes of examining baggage under sections 461, 462, 496, 581(a) and 582, Tariff Act of 1930, as amended (19 U.S.C. 1461, 1462, 1496, 1581(a), and 1582) and 19 U.S.C. 482. However, to the extent practical, the Customs officer should ask the owner or operator to unlock such vehicle or compartment first. Where the owner or operator is unavailable or refuses to unlock the vehicle or compartment or where it is not practical to ask the owner or operator to unlock the same, it shall be opened by the Customs Officer. If any article is subject to duty, or any prohibited article is found upon opening by the Customs Officer, the whole contents and the vehicle shall be subject to forfeiture pursuant to 19 U.S.C. 1462.

(b) *Inspection of baggage.* A Customs officer has the right to inspect all merchandise and baggage brought into the United States from contiguous countries under 19 U.S.C. 1461. He also has the right, under the same statute, to require that owners of such baggage open it or furnish

keys for doing so. Where the owner or agent is unavailable or refuses to open the baggage or furnish keys or where it is not practical to ask the owner or agent to open or furnish keys to the same, it shall be opened by the Customs Officer. If any article is subject to duty, or any prohibited article is found upon opening by the Customs Officer, the whole contents and the baggage shall be subject to forfeiture pursuant to 19 U.S.C. 1462.

PART 148—PERSONAL DECLARATIONS AND EXEMPTIONS

1. The general authority citation for Part 148 will be revised to read as set forth below, and the specific sectional authority for § 148.21 will continue to read as follows:

Authority: 19 U.S.C. 66, 1496, 1624. The provisions of this part, except for subpart C, are also issued under 19 U.S.C. 1202 (General Note 17, Harmonized Tariff Schedule of the United States).

Section 148.21 is also issued under 19 U.S.C. 1461, 1462.

* * * * * * *

2. It is proposed to revise § 148.21 to read as follows:

§ 148.21 Opening of baggage, compartments, or vehicles.

A Customs officer has the right to open and examine all baggage, compartments and vehicles brought into the United States under Sections 461, 462, 496 and 582, Tariff Act of 1930, as amended (19 U.S.C. 1461, 1462, 1496, and 1582) and 19 U.S.C. 482. To the extent practical, the owner or his agent should be asked to open the baggage, compartment or vehicle first. If the owner or his agent is unavailable or refuses to open the baggage, compartment, or vehicle, it shall be opened by the Customs officer. If any article subject to duty, or any prohibited article is found upon opening by the Customs officer, the whole contents and the baggage or vehicle shall be subject to forfeiture, pursuant to 19 U.S.C. 1462.

PETER J. BAISH,
Acting Commissioner of Customs.

Approved: October 20, 1994
DENNIS M. O'CONNELL,
Acting Deputy Assistant Secretary of the Treasury.

[Published in the Federal Register, November 10, 1994 (59 FR 56014)]

United States Court of International Trade

One Federal Plaza

New York, N.Y. 10007

Chief Judge

Dominick L. DiCarlo

Judges

Gregory W. Carman
Jane A. Restani
Thomas J. Aquilino, Jr.
Nicholas Tsoucalas
R. Kenton Musgrave
Richard W. Goldberg

Senior Judges

James L. Watson

Herbert N. Maletz

Bernard Newman

Samuel M. Rosenstein

Clerk

Joseph E. Lombardi

Decisions of the United States Court of International Trade

(Slip Op. 94–170)

ZENITH ELECTRONICS CORP., PLAINTIFF *v.* UNITED STATES, DEFENDANT, AND AOC INTERNATIONAL, ET AL., DEFENDANT-INTERVENORS

Consolidated Court No. 87–01–00039

(Dated October 21, 1994)

ORDER

WATSON, *Senior Judge:* Upon consideration of Defendant Intervenors AOC International's, Fulet Electronic Industrial Company, Ltd.'s, Sampo Corporation's, and Tatung Company's Motion for Entry of Final Judgement, and all other pleadings, papers and proceedings herein, it is hereby

ORDERED, that the Defendant Intervenors' motion be, and the same hereby is, GRANTED, and it is further

ORDERED, that the Commerce Department's remand determination dated May 5, 1993, as well as the Commerce Department's prior remand determinations in this case to the extent that they were not subsequently modified by this Court, if AFFIRMED; and it is further

ORDERED, that this Court's order dated July 29, 1991 is VACATED to the extent that it held that "no assessment rate cap may be applied in liquidating the subject entries unless the importer paid a cash duty for an estimated dumping duty" and it is further

ORDERED, that Commerce shall apply the assessment rate cap to all subject imports entered between publication dates of the Commerce Department's preliminary affirmative determination of sales at less than fair value and the International Trade Commission's final affirmative injury determination and it is further

ORDERED, that Final Judgment is entered accordingly.

ABSTRACTED CLASSIFICATION DECISIONS

DECISION NO. DATE JUDGE	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
C94/99 10/31/94 DiCarlo, J.	Payless Shoesource, Inc.	92-07-00500	6402.91.70, 6402.99.70 90¢/pair and 37.5%	6402.91.40, 6402.99.15 6%	Agreed statement of facts	Los Angeles Footwear, Protonic Lot No. 9002
C94/100 10/31/94 DiCarlo, J.	Traveler Trading Co.	91-02-00084	Chap. 61 or 62 Sec. II, HTSUSA 16.1%, 29.7%	9505.90.60 3.1%	Agreed statement of facts	Newark Costumes, of flimsy construction "carnival items"
C94/101 10/31/94 DiCarlo, J.	Traveler Trading Co.	92-12-00829	Chap. 61 or 62 Sec. II, HTSUSA 16.1%, 29.7%	9505.90.60 3.1%	Agreed statement of facts	Newark Costumes, of flimsy construction "carnival items"
C94/102 10/31/94 DiCarlo, J.	Traveler Trading Co.	91-09-00637	Chap. 61 or 62 Sec. II, HTSUSA 16.1%, 29.7%	9505.90.60 3.1%	Agreed statement of facts	Newark Costumes, of flimsy construction "carnival items"

Rules of the U.S. Court of International Trade

EFFECTIVE NOVEMBER 1, 1980

(AS AMENDED, [JANUARY 1, 1993] JANUARY 1, 1995)

Amendments to Rules 1, 4, 11, 12, 13, 41, 50, 52, 54, 56.2, 58.1, 82, 89, Appendix of Forms, and new Rule 4.1 and new Forms 1A and 1B

October 5, 1994

Effective date:
January 1, 1995

Amendments to Rule 1

Rule 1 is amended as follows:

RULE 1. SCOPE OF RULES.

These rules govern the procedure in the United States Court of International Trade. They shall be construed and administered to secure the just, speedy, and inexpensive determination of every action. When a procedural question arises which is not covered by these rules, the court may prescribe the procedure to be followed in any manner not inconsistent with these rules. The court may refer for guidance to the rules of other courts. The rules shall not be construed to extend or limit the jurisdiction of the court.

(As amended Oct. 3, 1984, eff. Jan. 1, 1985; Oct. 5, 1994, eff. Jan. 1, 1995.)

Amendments to Rule 4

Rule 4 is amended as follows:

RULE 4. SERVICE OF SUMMONS AND COMPLAINT.

(a) *Summons—Service by the Clerk.* * * *

(1) * * *
(2) * * *
(3) * * *
(4) * * *
(5) * * *

(b) *Summons and Complaint—Service by Plaintiff.* * * *

(c) *Service.*

[~~(1) (A) A summons and complaint shall, except as provided in subparagraphs (B) and (C) of this paragraph, be served by any person who is not a party and is not less than 18 years of age.~~

~~(B) A summons and complaint shall, at the request of the party seeking service or such party's attorney, be served by a United States marshal or deputy United States marshal, or by a person specially appointed by the court for that purpose, only~~

~~(i) on behalf of a party authorized to proceed in forma pauperis pursuant to 28 U.S.C. § 1915.~~

~~(ii) on behalf of the United States or an officer or agency of the United States, or~~

~~(iii) pursuant to an order issued by the court stating that a United States marshal or deputy United States marshal, or a person specially appointed for that purpose, is required to serve the summons and complaint in order that service be properly effected in that particular action.~~

~~(C) A summons and complaint may be served upon a defendant of any class referred to in paragraph (1) or (3) of subdivision (d) of this rule~~

~~(i) pursuant to the law of the State in which service is made for the service of summons or other like process upon such defendant in an action brought in the courts of general jurisdiction of that State, or~~

~~(ii) by mailing a copy of the summons and complaint by first class mail, postage prepaid, to the person to be served, together with two copies of a notice and acknowledgement which shall be substantially in the form set forth in Form 14 of the Appendix of Forms and a return envelope, postage prepaid, addressed to the sender. If no acknowledgement of service under this subdivision of this rule is received by the sender within 20 days after the mailing, service of such summons and complaint shall be made under subparagraph (A) or (B) of this paragraph in the manner prescribed by subdivision (d)(1) or (d)(3).~~

~~(D) Unless good cause is shown for not doing so the court shall order the payment of the costs of personal service by the person served if such person does not complete and return within 20 days after mailing, the notice and acknowledgement of receipt of summons and complaint.~~

~~(E) The notice and acknowledgement of receipt of summons and complaint shall be executed under oath or affirmation.~~

~~(2) The court shall freely make special appointments to serve summonses and complaints under paragraph (1)(B) of this subdivision of this rule.~~]

(1) Service of a summons and complaint may be effected by any person who is not a party and who is at least 18 years of age. At the request of the plaintiff, however, the court may direct that service be effected by a United States marshal, deputy United States marshal, or other person or officer specially appointed by the court for that purpose. Such an appointment must be made when the plaintiff is authorized to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915.

(2) In an action commenced under 28 U.S.C. § 1581(d), the court is authorized to serve the summons and complaint where the action was commenced *pro se* and the plaintiff has failed to make service.

(d) [~~*Summons and Complaint Person to be Served.*~~] *Waiver of Service; Duty to Save Costs of Service; Request to Waive.*

[~~The summons and complaint shall be served together as follows:~~]

(1) A defendant who waives service of a summons does not thereby waive any objection to the jurisdiction of the court over the person of the defendant.

(2) An individual, corporation, or association that is subject to service under subdivision (e), (f), or (h) and that receives notice of an action in the manner provided in this paragraph has a duty to avoid unnecessary costs of serving the summons. To avoid costs, the plaintiff may notify such a defendant of the commencement of the action and request that the defendant waive service of a summons. The notice and request

(A) shall be in writing and shall be addressed directly to the defendant, if an individual, or else to an officer or managing or general agent (or other agent authorized by appointment or law to receive service of process) of a defendant subject to service under subdivision (h);

(B) shall be dispatched through first-class mail or other reliable means;

(C) shall be accompanied by a copy of the complaint;

(D) shall inform the defendant, by means of a text substantially in the form as set forth in Forms 1A and 1B of the Appendix of Forms, of the consequences of compliance and of a failure to comply with the request;

(E) shall set forth the date on which the request is sent;

(F) shall allow the defendant a reasonable time to return the waiver, which shall be at least 30 days from the date on which the request is sent, or 60 days from that date if the defendant is addressed outside any judicial district of the United States; and

(G) shall provide the defendant with an extra copy of the notice and request, as well as a prepaid means of compliance in writing. If a defendant located within the United States fails to comply with a request for waiver made by a plaintiff located within the United States, the court shall impose the costs subsequently incurred in effecting service on the defendant unless good cause for the failure be shown.

(3) A defendant that, before being served with process, timely returns a waiver so requested is not required to serve an answer to the complaint until 60 days after the date on which the request for waiver of service was sent, or 90 days after that date if the defendant was addressed outside any judicial district of the United States.

(4) When the plaintiff files a waiver of service with the court, the action shall proceed, except as provided in paragraph (3), as if a summons and complaint had been served at the time of filing the wavier, and no proof of service shall be required.

(5) The costs to be imposed on a defendant under paragraph (2) for failure to comply with a request to waive service of a summons shall include the costs subsequently incurred in effecting service under subdivision (e), (f), or (h), together with the costs, including a reasonable attorney's fee, of any motion required to collect the costs of service.

(e)[~~(1)~~] *Service Upon Individuals Within a Judicial District of the United States.*

Unless otherwise provided by federal law, service [U]upon an individual other than an infant or an incompetent person, may be effected in any judicial district of the United States:

(1) pursuant to the law of the state in which service is effected, for the service of a summons upon the defendant in an action brought in the courts of general jurisdiction of the state; or

(2) by delivering a copy of the summons and complaint to the individual personally or by leaving copies thereof at the individual's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein or by delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to receive service of process.

[~~(f) *Amendment Of Proof Of Service.*~~

~~The court may allow proof of service of a summons or complaint to be amended at any time, in its discretion and upon terms as it deems just, unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the amendment is allowed.~~]

(f) *Service Upon Individuals in a Foreign Country.*

Unless otherwise provided by federal law, service upon an individual from whom a waiver has not been obtained and filed, other than an infant or an incompetent person, may be effected in a place not within any judicial district of the United States:

(1) by any internationally agreed means reasonably calculated to give notice, such as those means authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents; or

(2) if there is no internationally agreed means of service or the applicable international agreement allows other means of service, provided that service is reasonably calculated to give notice;

(A) in the manner prescribed by the law of the foreign country for service in that country in an action in any of its courts of general jurisdiction; or

(B) as directed by the foreign authority in response to a letter rogatory or letter of request; or

(C) unless prohibited by the law of the foreign country, by

(i) delivery to the individual personally of a copy of the summons and the complaint; or

(ii) any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the party to be served; or

(3) by other means not prohibited by international agreement as may be directed by the court.

[(g) *Alternative Provisions for Service in a Foreign Country.*

(1) *Manner.* Whenever a statute of the United States or an order of court thereunder provides for service of a summons and complaint, or of a notice, or of an order in lieu of a summons and complaint, upon a party not an inhabitant of or found within the United States, service may be made under the circumstances and in the manner prescribed by the statute or order, or, if there is no provision therein prescribing the manner of service and service is to be effected upon a party in a foreign country, it is sufficient if service of the summons and complaint is made: (A) in the manner prescribed by the law of the foreign country for service in that country in an action in any of its courts of general jurisdiction; or (B) as directed by the foreign authority in response to a letter rogatory, when service in either case is reasonably calculated to give actual notice; or (C) upon an individual, by delivering to the individual personally, and upon a corporation or partnership or association, by delivery to an officer, a managing or general agent; or (D) by any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the party to be served; or (E) as directed by order of the court. Service under (C) or (E) above may be made by any person who is not a party and is less than 18 years of age or who is designated by order of this court or by the foreign court.

(2) *Return.* Proof of service may be made as prescribed by subdivision (e) of this rule, or by the law of the foreign country, or by order of this court. When service is made pursuant to paragraph (1)(D) of this subdivision (g), proof of service shall include a receipt signed by the addressee or other evidence of delivery to the addressee satisfactory to this court.]

(g) *Service Upon Infants and Incompetent Persons.*

Service [U]upon an infant or an incompetent person[, by serving the summons and complaint] in a judicial district of the United States shall be effected in a manner prescribed by the law of the state [or place] in which the service is made for the service of summons or other like process upon any such defendant in action brought in the courts of general jurisdiction of that state [or place]. Service upon an infant or an incompetent person in a place not within any judicial district of the United States shall be effected in a manner prescribed by paragraph (2)(A) or (2)(B) of subdivision (f) or by such means as the court may direct.

(h) *Service Upon Corporations and Associations.*

Unless otherwise provided by federal law, service [U]upon a domestic or foreign corporation or upon a partnership or other unincorporated association [which] that is subject to suit under a common name, and from which a waiver of service has not been obtained and filed, shall be effected:

(1) in a judicial district of the United States in the manner prescribed for individuals by subdivision (e)(1), or by delivering a copy of the summons and the complaint to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process, and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant[,] or

(2) in a place not within any judicial district of the United States in any manner prescribed for individuals by subdivision (f) except personal delivery as provided in paragraph (2)(C)(i) thereof.

(i) [(4)] *Service Upon the United States, and Its Agencies, Corporations, or Officers.*

(1) Service [U]upon the United States[,] shall be effected by serving the Attorney General of the United States, by delivering or by mailing by registered or certified mail, return receipt requested, a copy of the summons and complaint to the Attorney-in-Charge, International Trade Field Office, Commercial Litigation Branch, Department of Justice.

[(5)] (2) Service [U]upon an officer or agency of the United States[,] shall be effected by serving the United States, and by delivering or by mailing by registered or certified mail, return receipt requested, a copy of the summons and complaint to such officer or agency. If the agency is a corporation, the copy shall be delivered as provided in [paragraph (3) of this] subdivision [(d)] (h).

(j) [(6)] *Service Upon Foreign State or Local Governments.*

(1) Service upon a foreign state or a political subdivision, agency, or instrumentality thereof shall be effected pursuant to 28 U.S.C. § 1608.

(2) Service [U]upon a state, [or] municipal corporation, or other governmental organization [thereof] subject to suit[,] shall be effected by delivering a copy of the summons and complaint to [the] its chief executive officer [thereof] or by serving the

summons and complaint in the manner prescribed by the law of that state for the service of summons or other like process upon any such defendant.

(k) *Territorial Limits of Effective Service.*

(1) Service of a summons or filing a waiver of service is effective to establish jurisdiction over the person of a defendant

(A) who could be subjected to the jurisdiction of a court of general jurisdiction in the state in which service is made, or

(B) who is a party joined under USCIT R. 14 or 19 and is served at a place within a judicial district of the United States, or

(C) who is subject to the federal interpleader jurisdiction under 28 U.S.C. § 1335, or

(D) when authorized by a statute of the United States.

(2) If the exercise of jurisdiction is consistent with the Constitution and laws of the United States, serving a summons or filing a waiver of service is also effective, with respect to claims arising under federal law, to establish personal jurisdiction over the person of any defendant who is not subject to the jurisdiction of the courts of general jurisdiction of any state.

(l) [~~(e)~~] *[~~Return.~~] Proof of Service*

If service is not waived, [~~T~~]the person [~~serving the process~~] effecting service shall make proof [~~of service~~] thereof to the [~~clerk of the~~] court [~~promptly and in any event within the time during which the person service must respond to the process~~]. If service is made by a person other than a United States marshal or deputy United States marshal, [~~such~~] the person shall make affidavit thereof. Proof of service in a place not within any judicial district of the United States shall, if effected under paragraph (1) of subdivision (f), be made pursuant to the applicable treaty or convention, and shall, if effected under paragraph (2) or (3) thereof, include a receipt signed by the addressee or other evidence of delivery to the addressee satisfactory to the court. [~~If service is made under subdivision (e)(1)(C)(ii) of this rule, return shall be made by the sender's filing with the clerk of the court the acknowledgement received pursuant to such subdivision.~~] Failure to make proof of service does not affect the validity of the service. The court may allow proof of service to be amended.

(m) [~~(h)~~] [*~~Summons and Complaint~~] Time Limit For Service.*

If [a] service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint, [~~action is commenced and the party on whose behalf such service was required cannot show good cause why such service was not made within that period,~~] the court, [~~action shall be dismissed as to that defendant without prejudice~~] upon [~~the court's~~] motion or its own initiative [~~with~~] after notice to [~~such party or upon motion~~] the plaintiff, shall dismiss the action without prejudice as to that defendant or direct that service be effected within a specified time; provided that if the plaintiff shows good cause for the failure, the court shall extend the time for service for an appropriate period. This subdivision [~~shall~~] does not apply to service in a foreign country pursuant to subdivision [~~(g) of this rule~~] (f) or (j)(1).

PRACTICE COMMENT: * * *

PRACTICE COMMENT: * * *

(As amended Nov. 4, 1981, eff. Jan. 1, 1982; Oct. 3, 1984, eff. Jan 1, 1985; July 21, 1986, eff. Oct. 1, 1986; July 28, 1988, eff. Nov. 1, 1988; Oct. 5, 1994, eff. Jan. 1, 1995.)

New Rule 4.1

New Rule 4.1 is as follows:

RULE 4.1. SERVICE OF OTHER PROCESS.

Process other than a summons as provided in USCIT R. 4 or subpoena as provided in USCIT R. 45 shall be served by a United States marshal, a deputy United States marshal, or a person specially appointed for that purpose, who shall make proof of service as provided in USCIT R. 4(l).

(Added Oct. 5, 1994, eff. Jan. 1, 1995.)

Amendments to Rule 11

Rule 11 is amended as follows:

RULE 11. SIGNING OF PLEADINGS, MOTIONS, AND OTHER PAPERS—SANCTIONS.

~~[Every pleading, motion, and other paper of a party represented by an attorney shall be signed by at least one attorney of record in his the attorney's individual name, whose address and telephone number shall be signed by an attorney authorized to do so on behalf of the Assistant Attorney General, Civil Division, Department of Justice. A pleading, motion, or other paper of an agency of the United States, authorized by statute to represent itself in judicial proceedings, may be signed by an attorney authorized to do so on behalf of the agency. A party who is not represented by an attorney shall sign his the party's pleading, motion, or other paper and state address and telephone number. Except when otherwise specifically prescribed by rule or statute, pleadings or other papers need not be verified or accompanied by affidavit. The signature of an attorney or party constitutes a certificate by him the signer has read the pleading, motion, or other paper; that to the best of his the signer's knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. If a pleading, motion, or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorneys fee.]~~

(a) *Signature*

Every pleading, written motion, and other paper shall be signed by at least one attorney of record in the attorney's individual name, or, if the party is not represented by an attorney, shall be signed by the party. Every pleading, motion, or other paper of the United States shall be signed by an attorney authorized to do so on behalf of the Assistant Attorney General, Civil Division, Department of Justice. A pleading, motion, or other paper of an agency of the United States, authorized by statute to represent itself in judicial proceedings, may be signed by an attorney authorized to do so on behalf of the agency. Each paper shall state the signer's address and telephone number, if any. Except when otherwise specifically provided by rule or statute, pleadings or other papers need not be verified or accompanied by affidavit. An unsigned paper shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the pleader or movant attorney or party.

(b) *Representation To Court*

By presenting to the court (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after any inquiry reasonable under the circumstances,—

(1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a non-frivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(3) the allegations and other factual contentions have evidentiary support or, of specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

(c) *Sanctions*

If, after notice and a reasonable opportunity to respond, the court determines that subdivision (b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation.

(1) How Initiated

(A) By Motion. A motion for sanctions under this rule shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate subdivision (b). It shall be served as provided in USCIT R. 5, but shall not be filed with or presented to the court unless, within 21 days after service of the motion (or such other period as the court may prescribe), the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected. If warranted, the court may award to the party prevailing on the motion the reasonable expenses and attorney's fees incurred in presenting or opposing the motion. Absent exceptional circumstances, a law firm shall be held jointly responsible for violations committed by its partners, associates, and employees.

(B) On Court's Initiative. On its own initiative, the court may enter an order describing the specific conduct that appears to violate subdivision (b) and directing an attorney, law firm, or party to show cause why it has not violated subdivision (b) with respect thereto.

(2) Nature of Sanction; Limitations. A sanction imposed for violation of this rule shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. Subject to the limitations in subparagraphs (A) and (B), the sanction may consist of, or include, directives of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorney's fees and other expenses incurred as a direct result of the violation.

(A) Monetary sanctions may not be awarded against a represented party for a violation of subdivision (b)(2).

(B) Monetary sanctions may not be awarded on the court's initiative unless the court issues its order to show cause before a voluntary dismissal or settlement of the claims made by or against the party which is, or whose attorneys are, to be sanctioned.

(3) Order. When imposing sanctions, the court shall describe the conduct determined to constitute a violation of this rule and explain the basis for the sanction imposed.

(d) *Inapplicability To Discovery.*

Subdivisions (a) through (c) of this rule do not apply to disclosures and discovery requests, responses, objections, and motions that are subject to the provisions of USCIT R. 26 through 37.

(As amended Oct. 3, 1984, eff. Jan. 1, 1985; July 28, 1988, eff. Nov. 1, 1988; Oct. 5, 1994, eff. Jan. 1, 1995.)

Amendments to Rule 12

Rule 12 is amended as follows:

RULE 12. DEFENSES AND OBJECTIONS—WHEN AND HOW PRESENTED—BY PLEADING OR MOTION—MOTION FOR JUDGMENT ON THE PLEADINGS.

(a) *When Presented.*

(1) Unless a different time is prescribed in a statute of the United States.

(A) [T] the United States, or an officer or agency thereof, shall serve an answer to the complaint, or to a cross-claim, or a reply to counterclaim within 60 days after the service upon the Attorney-in-Charge, International Trade Field Office, Commercial Litigation Branch, Department of Justice, of the pleading in which the claim is asserted; except that,

(i) [~~(1)~~] in an action described in 28 U.S.C. § 1581 (c), no answer shall be served or filed, and

(ii) [~~(2)~~] in an action described in 28 U.S.C. § 1581 (f), involving an order to make confidential information available under section 777 (c)(2) of the Tariff Act of 1930, the answer shall be served within 10 days after being served

with [~~the service of~~] the summons and complaint. For good cause shown, the court in any action may order a different period of time.

(B) Any other defendant shall serve an answer within 20 days after being served with the summons and complaint, or

(C) If service of the summons has been timely waived on request under Rule 4(d), within 60 days after the date when the request for waiver was sent, or within 90 days after that date if the defendant was addressed outside any judicial district of the United States.

(2) A party other than the United States or an officer or agency thereof served with a pleading stating a cross-claim against the party shall serve an answer thereto within 20 days after being served. The plaintiff shall serve a reply to a counterclaim in the answer within 20 days after service of the answer, or, if a reply is ordered by the court, within 20 days after service of the order, unless the order otherwise directs.

(b) *How Presented.* * * *

(c) *Motion for Judgement on the Pleadings.* * * *

(d) *Preliminary Hearings.* * * *

(e) *Motion for More Definite Statement.* * * *

(f) *Motion [~~To~~] to Strike.* * * *

(g) *Consolidation of Defenses in Motion.* * * *

(h) *Waiver or Preservation of Certain Defenses.* * * *

(1) * * *

(2) * * *

(3) * * *

(As amended Nov. 4, 1981, eff. Jan. 1, 1982; Oct. 3, 1984, eff. Jan. 1, 1985; July 28, 1988, eff. Nov. 1, 1988; Sept. 25, 1992, eff. Jan. 1, 1993; Oct. 5, 1994, eff. Jan. 1, 1995.)

Amendments to Rule 13

Rule 13 is amended as follows:

RULE 13. COUNTERCLAIM AND CROSS-CLAIM.

(a) *Counterclaims.* * * *

(b) *Counterclaim Exceeding Opposing Claim.* * * *

(c) *Counterclaim Against the United States.* * * *

(d) *Counterclaim Maturing or Acquired After Pleading.* * * *

(e) *Omitted Counterclaim.* * * *

(f) *Cross-Claim Against Co-Party.* * * *

(g) *Joinder of Additional Parties.* * * *

(h) *Separate Trials—Separate Judgments.* * * *

(i) *Demand for a Complaint.*

(1) Notwithstanding the pendency of the civil action on a Reserve or Suspension Calendar, in a civil action described in 28 U.S.C. § 1581 (a) or (b), for good cause shown, a defendant who wishes to proceed expeditiously in the action may file a motion demanding that the plaintiff file a complaint.

(2) The motion shall include, among other information, (A) a statement of the reasons for wanting to proceed at this time, (B) a proposed timetable for requiring the plaintiff to file a complaint if different from the time provided for in this rule and the reasons for a different time, and, in a suspended action, other scheduling information that the defendant believes necessary to enable the court to formulate an order removing a suspended action from a Suspension Calendar, and (C) a description of any counterclaim known to the defendant at the time the motion is filed that the defendant intends to assert in its answer.

(3) If an order granting a motion for a demand for a complaint is entered, plaintiff shall file its complaint within 30 days after the date of service of the order if plaintiff wishes to continue the action.

(4) If an order granting a motion for a demand for a complaint is entered and plaintiff does not voluntarily dismiss the action or fails to file a complaint, the clerk shall enter an order of dismissal without further direction from the court.

(As amended July 28, 1988, eff. Nov. 1, 1988; Oct. 5, 1994, eff. Jan. 1, 1995.)

Amendments to Rule 41

Rule 41 is amended as follows:

RULE 41. DISMISSAL OF ACTIONS.

(a) *Voluntary Dismissal—Effect Thereof.*

(1) By plaintiff—By Stipulation. * * *
(2) By Order of Court. * * *

(b) *Involuntary Dismissal—Effect Thereof.*

(1) * * *
(2) Actions commenced pursuant to 28 U.S.C. § 1581(c) by the filing of a summons only are subject to dismissal for failure to file a complaint at the expiration of the applicable period of time prescribed by 19 U.S.C. § 1516a.
[~~(2)~~] (3) * * *
[~~(3)~~] (4) * * *
[~~(4)~~] (5) * * *

(c) *Insufficiency of Evidence.* * * *
(d) *Dismissal of Counterclaim, Cross-Claim, or Third-Party Claim.* * * *
(e) *Costs of Previously Dismissed Action.* * * *

(As amended Nov. 4, 1981, eff. Jan. 1, 1982; Oct. 3, 1984, eff. Jan. 1, 1985; July 28, 1988, eff. Nov. 1, 1988; Sept. 25, 1992, eff. Jan. 1, 1993; Oct. 5, 1994, eff. Jan. 1, 1995.)

Amendments to Rule 50

Rule 50 is amended as follows:

RULE 50. JUDGMENT AS A MATTER OF LAW IN ACTIONS TRIED BY JURY; ALTERNATIVE MOTION FOR NEW TRIAL; CONDITIONAL RULINGS.

(a) *Judgment as a Matter of Law.*

(1) If during a trial by jury a party has been fully heard [~~with respect to~~] on an issue and there is no legally sufficient evidentiary basis for a reasonable jury to [~~have found~~] find for that party [~~with respect to~~] on that issue, the court may determine the issue against that party and may grant a motion for judgment as a matter of law against that party [~~on any claim, counterclaim, cross claim, or third party claim~~] with respect to a claim or defense that cannot under the controlling law be maintained or defeated without a favorable finding on that issue.
(2) * * *

(b) *Renewal of Motion for Judgement After Trial; Alternative Motion for New Trial.* * * *
(c) *Same; Condistional Rulings on Grant of Motion for Judgment as a Matter of Law.* * * *
(d) *Same; Denial of Motion for Judgment as a Matter of Law.* * *
PRACTICE COMMENT: * * *

(As amended July 28, 1988, eff. Nov. 1, 1988; Oct. 3, 1990, eff. Jan. 1, 1991; Sept. 25, 1992, eff. Jan. 1, 1993; Oct. 5, 1994, eff. Jan. 1, 1995.)

Amendments to Rule 52

Rule 52 is amended as follows:

RULE 52. FINDINGS BY THE COURT; JUDGMENT ON PARTIAL FINDINGS.

(a) *Effect.* * * *

(b) *Amendment.* * * *

(c) *Judgment on Partial Findings.* If during a trial without a jury a party has been fully heard [~~with respect to~~] on an issue and the court finds against the party on that issue, the court may enter judgment as a matter of law against that party [~~on any claim, counterclaim, cross claim or third party claim~~] with respect to a claim or defense that cannot under the controlling law be maintained or defeated without a favorable finding on that issue, or the court ma y decline to render any judgment until the close of all the evidence. Such a judgment shall be supported by findings of fact and conclusions of law as required by subdivision (a) of this rule.

(As amended Oct. 3, 1984, eff. Jan. 1, 1985; June 19, 1985, eff. Oct. 1, 1985; Sept. 25, 1992, eff. Jan. 1, 1993; Oct. 5, 1994, eff. Jan. 1, 1995.)

Amendments to Rule 54

Rule 54 is amended as follows

RULE 54. JUDGMENTS.

(a) *Definition—Form.* * * *

(b) *Judgment Upon Multiple Claims or Involving Multiple Parties.* * * *

(c) *Demand for Judgment.* * * *

(d) *Attorney's Fees.*

(1) Claims for attorney's fees and related non-taxable expenses shall be made by motion unless the substantive law governing the action provides for the recovery of such fees as an element of damages to be proved at trial.

(2) Unless otherwise provided by statute or order of the court, the motion must be filed and served no later than 14 days after entry of judgment; must specify the judgment and the statute, rule, or other grounds entitling the moving party to the award; and must state the amount or provide a fair estimate of the amount sought. If directed by the court, the motion shall also disclose the terms of any agreement with respect to fees to be paid for the services for which claim is made.

(3) On request of a party or class member, the court shall afford an opportunity for adversary submissions with respect to the motion. The court may determine issues of liability for fees before receiving submissions bearing on issues of evaluation of services for which liability is imposed by the court. The court shall find the facts and state its conclusions of law as provided in USCIT R. 52(a), and a judgment shall be set forth in a separate document as provided in USCIT R. 58.

(4) By court rules, the court may establish special procedures by which issues relating to such fees may be resolved without extensive evidentiary hearings.

(5) The provisions of subparagraphs (1) through (4) do not apply to claims for fees and expenses as sanctions for violations of these rules or under 28 U.S.C. § 1927.

(As amended July 28, 1988, eff. Nov. 1, 1988; Oct. 5, 1994, eff. Jan. 1, 1995.)

Amendments to Rule 56.2

Rule 56.2 is amended as follows:

RULE 56.2. JUDGMENT UPON AN AGENCY RECORD FOR AN ACTION DESCRIBED IN 28 U.S.C. § 1581(c).

(a) *Proposed Briefing Schedule and Joint Status Report.* The judge may modify the following procedures as appropriate in the circumstances of the action, or the parties may suggest modification of these procedures.

Any proposed judicial protective order shall be filed within 30 days after the date of service of the complaint. Prior to the filing of the proposed judicial protective order, the moving party shall consult with all other parties to the action in accordance with USCIT R. 7(b) regarding the terms and conditions of the proposed judicial protective order.

Any motion to intervene as of right shall be filed within the time and in the manner prescribed by USCIT R. 24.

Any motion for a preliminary injunction to enjoin the liquidation of entries that are the subject of the action shall be filed by a party to the action within 30 days after the date of service of the complaint, or at such later time, for good cause shown. Notwithstanding the first sentence of this paragraph, an intervenor shall file a motion for a preliminary injunction no earlier than the date of filing of its motion to intervene and no later than 30 days after the date of service of the order granting intervention, or at such later time, but only for good cause shown. Prior to the filing of the motion, the moving party shall consult with all other parties to the action in accordance with USCIT R. 7(b).

(b) *Cross-motions.* * * *

(c) *Briefs.*

(1) * * *
(2) * * *

(d) *Time to Respond.* * * *

(e) *Hearing.* * * *

(f) *Partial Judgment.* * * *

(g) *Voluntary Dismissal—Time Limitation* * * *

(Added Sept. 25, 1992, eff. Jan. 1, 1993; and amended Oct. 5, 1994, eff. Jan. 1, 1995.)

Amendments to Rule 58.1

Rule 58.1 is amended as follows:

RULE 58.1. STIPULATED JUDGMENT ON AGREED STATEMENT OF FACTS—GENERAL REQUIREMENTS.

An action described in 28 U.S.C. § 1581(a) or (b) be stipulated for judgment, at any time without brief or complaint or formal amendment of any pleading, by filing with the clerk of the court a stipulation for judgment on agreed statement of facts, signed by the parties or their attorneys, together with a proposed stipulated judgment. [~~Within 5 days after a proposed stipulation for judgment on agreed statement of facts is served upon the Attorney in Charge, International Trade Field Office, Commercial Litigation Branch, Department of Justice, the plaintiff shall advise the court in writing of the date of that service.~~] The proposed stipulated judgment on agreed statement of facts shall be substantially in the form set forth in USCIT Form 9 of the Appendix of Forms.

(Added Nov. 4, 1981, eff. Jan. 1, 1982; and amended Oct. 5, 1994, eff. Jan. 1, 1995.)

Amendments to Rule 82

Rule 82 is amended as follows:

RULE 82. CLERK'S OFFICE AND ORDER BY THE CLERK.

(a) *Business Hours and Address.* * * *

(b) *Motions, Orders and Judgments.* The clerk may dispose of the following types of motions and sign the following types of orders and judgments without submission to the court, but the clerk's action may be suspended, altered or rescinded by the court for good cause shown:

(1) Motions on consent in unassigned cases extending the time within which to plead, move or respond.

(2) Motions on consent in unassigned cases for the discontinuance or dismissal of the action.

(3) Orders of dismissal upon notice as prescribed by Rules 41(a)(1) and 41(b)[~~(2)~~](3).

(4) Orders of dismissal for lack of prosecution as prescribed by Rules 83(c) and 85(d).

(5) Consent motions to intervene as of right made within the 30-day period provided in Rule 24(a).

(6) Orders of dismissal for failure to file a complaint as prescribed by Rule 13(i)(4).

(7) Orders of dismissal for failure to file a complaint as prescribed by Rule 41(b)(2).

(c) *Clerk-Definition.* * * *

(d) *Filing of Papers.* * * *

PRACTICE COMMENT: * * *

(As amended Nov. 4, 1981, eff. Jan. 1, 1982; Oct. 3, 1984, eff. Jan. 1, 1985; June 19, 1985, eff. Oct. 1, 1985; July 28, 1988, eff. Nov. 1, 1988; Sept. 25, 1992, eff. Jan. 1, 1993; Oct. 5, 1994, eff. Jan. 1, 1995.)

Amendments to Rule 89

Rule 89 is amended as follows:

RULE 89. EFFECTIVE DATE.

(a) *Effective Date of Original Rules.* * * *

(b) *Effective Date of Amendments.* * * *

(c) *Effective Date of Amendment.* * * *

(d) *Effective Date of Amendments.* * * *

(e) *Effective Date of Amendments.* * * *

(f) *Effective Date of Amendments.* * * *

(g) *Effective Date of Amendments.* * * *

(h) *Effective Date of Amendments.* * * *

(i) *Effective Date of Amendments.* * * *

(j) *Effective Date of Amendments.* * * *

(k) *Effective Date of Amendments.* * * *

(l) *Effective Date of Amendments.* * * *

(m) *Effective Date of Amendments.* The amendments adopted by the court on October 5, 1994, shall take effect on January 1, 1995. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent in the opinion of the court their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(Added Nov. 4, 1981, eff. Jan. 1, 1982; and amended Dec. 29, 1982, eff. Jan. 1, 1983; Oct. 3, 1984, eff. Jan. 1, 1985; June 19, 1985, eff. Oct. 1, 1985; July 21, 1986, eff. Oct. 1, 1986; Dec. 3, 1986, eff. Mar. 1, 1987; Apr. 28, 1987, eff. June 1, 1987; July 28, 1988, eff. Nov. 1, 1988; Oct. 3, 1990, eff. Jan. 1, 1991; Mar. 1, 1991, eff. Mar. 1, 1991; Sept. 25, 1992, eff. Jan. 1, 1993; Oct. 5, 1994, eff. Jan. 1, 1995.)

New Form 1A

New Form 1A reads as follows:

FORM 1A. NOTICE OF LAWSUIT AND REQUEST FOR WAIVER OF SERVICE OF SUMMONS.

TO: _____(A)_____
[as _____(B)_____of _____(C)

A lawsuit has been commenced against you (or the entity on whose behalf you are addressed). A copy of the complaint is attached to this notice. It has been filed in the United States Court of International Trade and has been assigned Court Number _____(D)_____.

This is not a formal summons or notification from the court, but rather my request that you sign and return the enclosed waiver of service in order to save the cost of the complaint. The cost of service will be avoided if I receive the signed copy of the waiver within _____(E)_____ days after the date designated below as the date on which this Notice and Request is sent. I enclose a stamped and addressed envelope (or other means of cost-free return) for your use. An extra copy of the waiver is also attached for your records.

If you comply with this request and return the signed waiver, it will be filed with the court and no summons will be served on you. The action will then proceed as if you had been served on the date the waiver is filed, except that you will not be obligated to answer the complaint before 60 days from the date designated below as the date on which this notice is sent (or before 90 days from that date if your address is not in any judicial district of the United States).

If you do not return the signed waiver within the time indicated, I will take appropriate steps to effect formal service in a manner authorized by the Rules of the Court of International Trade and will then, to the extent authorized by those Rules, ask the court to require you (or the party on whose behalf you are addressed) to pay the full costs of such service. In that connection, please read the statement concerning the duty of parties to waive the service of the summons, which is set forth on the reverse side (or at the foot) of the waiver form.

I affirm that this request is being sent to you on behalf of the plaintiff, this_____day of _____, _____.

_____
Signature of Plaintiff's Attorney
or Unrepresented Plaintiff

Notes:
A—Name of individual defendant (or name of officer or agent of corporate defendant)
B—Title, or other relationship of individual to corporate defendant
C—Name of corporate defendant, if any
D—Court Number of Action
E—Addressee must be given at least 30 days (60 days if located in foreign country) in which to return waiver

(Added Oct. 5, 1994, eff. Jan. 1, 1995.)

New Form 1B

New Form 1B reads as follows:

FORM 1B. WAIVER OF SERVICE OF SUMMONS.

TO: _____(name of plaintiff's attorney or unrepresented plaintiff)

I acknowledge receipt of your request that I waive service of a summons in the action of _____(caption of action)_____, which is Court Number _____(docket number)_____ in the United States Court of International Trade. I have also received a copy of the complaint in this action, two copies of this instrument, and a means by which I can return the signed waiver to you without cost to me.

I agree to save the cost of service of a summons and an additional copy of the complaint in this lawsuit by not requiring that I (or the entity on whose behalf I am acting) be served with judicial process in the manner provided by USCIT R. 4.

I (or the entity on whose behalf I am acting) will retain all defenses or objections to the lawsuit or to the jurisdiction of the court except for objections based on a defect in the summons or in the service of the summons.

I understand that a judgment may be entered against me (or the party on whose behalf I am acting) if an answer or motion under USCIT R. 12 is not served upon you within 60 days after _____(date request was sent)_____, or within 90 days after that date if the request was sent outside the United States.

_____ _____

Date Signature

Printed/typed name:_____

[as _____]

[of _____]

To be printed on reverse side of the waiver form
or set forth at the foot of the form:
Duty to Avoid Unnecessary Costs of Service of Summons

USCIT R. 4 requires certain parties to cooperate in saving unnecessary costs of service of the summons and complaint. A defendant located in the United States who, after being notified of an action and asked by a plaintiff located in the United States to waive service of a summons, fails to do so will be required to bear the cost of such service unless good cause be shown for its failure to sign and return the waiver.

It is not good cause for a failure to waive service that a party believes that the complaint is unfounded, or that the court lacks jurisdiction over the subject matter of the action or over its person or property. A party who waives service of the summons retains all defenses and objections (except any relating to the summons or to the service of the summons), and may later object to the jurisdiction of the court.

A defendant who waives service must within the time specified on the waiver form serve on the plaintiff's attorney (or unrepresented plaintiff) a response to the complaint and must also file a signed copy of the response to the complaint and must also file a signed copy of the response with the court. If the answer or motion is not served within this time, a default judgment may be taken against that defendant. By waiving service, a defendant is allowed more time to answer than if the summons had been actually served when the request for waiver of service was received.

(Added Oct. 5, 1994, eff. Jan. 1, 1995.)

Amendments to Appendix of Forms

The Appendix of Forms is amended as follows:

GENERAL INSTRUCTIONS

1. * * *
2. * * *
3. * * *
4. * * *
5. * * *
6. * * *
7. * * *
8. * * *

SPECIFIC INSTRUCTIONS

Form 1 * * *

Form 1A

A Notice of Lawsuit and Request for Waiver of Service of Summons which, as previously prescribed by Rule 4(d), shall be addressed directly to a defendant and sent by first-class mail or other reliable means. The defendant shall be allowed a reasonable period of time to return the waiver (Form 1B).

Plaintiff shall provide the defendant with a stamped and addressed return envelope. Plaintiff also shall provide the defendant with a copy of the waiver for defendant's records.

Upon receipt of the signed waiver, plaintiff shall file the waiver with the court.

If the waiver is timely returned by the defendant, that defendant, if located within any judicial district in the United States, is not required to serve an answer until 60 days after the date on which the request for the waiver was sent.

(Added Oct. 5, 1994, eff. Jan. 1, 1995.)

Form 1B

A Waiver of Service of Summons which, as prescribed by Rule 4(d), shall be returned to a plaintiff who has requested a defendant to waive service.

If a defendant, after being notified of an action and asked to waive service, fails to do so, that defendant will be required to bear the cost of service unless good cause can be shown for its failure to sign and return the waiver.

If the waiver is timely returned by the defendant, that defendant, if located within any judicial district of the United States, is not required to serve an answer until 60 days after the date on which the request for the waiver was sent.

(Added Oct. 5, 1994, eff. Jan. 1, 1995.)

Form 2 * * *
Form 3 * * *
Form 4 * * *
Form 5 * * *
Form 6 * * *
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